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SELECTIONS

FROM THE

RECORDS OF THE GOVERNMENT OF INDIA,

HOME DEPARTMENT.

No. CLV.

CORRESPONDENCE REGARDING THE LAW OF LAND-SALE.

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CONTENTS.

Extract from the Proceedings of the Government of India in the Home Department (Judicial), Nos. 9—608 *to* 9—618, *under date Simla, the* 27*th May* 1879.

READ the Volume of Selections from correspondence in the Home Department regarding the law of land sale and other matters connected with the condition of the agricultural peasantry in the Deccan and other parts of India.

RESOLUTION.

SHORTLY after the mutiny of 1857-58, the Secretary of State (Lord Stanley) drew attention to the change worked by the multiplication and increased powers of the civil courts among the landholding and agricultural community. He observed that the legislation of 1831, which enlarged the powers of Munsifs (petty civil Judges of the first instance), had greatly promoted the rapid transfer of landed property from old to new hands. He pointed out that the disturbances of 1857-58 in Northern India had shown that such changes of ownership were disliked by the tenantry, and might impair the loyalty and good will of the great proprietary body of India. While fully recognising the impolicy of putting restrictions upon the ready transfer of property, Her Majesty's Government considered that the circumstances were such as to call for the adoption of palliative or remedial measures; and Lord Stanley desired the early attention of the Government of India to the matter.

2. In the year 1859 a series of valuable and interesting opinions were received from the Government of, and from selected officers in, the North-Western Provinces on the subject of Lord Stanley's despatch. The Lieutenant-Governor (Sir George Edmonstone) and some of his officers (notably Mr. F. B. Pearson) were opposed to the imposition of restrictions on the sale of land in satisfaction of debts. Sir William Muir and Mr. F. O. Mayne were in favour of restricting in different ways the power of the civil courts to execute decrees for debt against landed property. Sir John Strachey,

while admitting the existence of evils under the then system, held that worse evils might follow if a remedy was attempted by imposing restrictions on the sale of land. He considered that the civil courts ought to be improved, and that the revenue system ought to be rendered less unbending ; but he pointed out that no reform of the courts would alone meet the evil. He advised that the subordinate civil courts should have no power to order attachment or sale of immoveable property ; he suggested the establishment of agricultural banks in every district, under the control of Government, for the purpose of making loans to agriculturists ; and he expressed his hope that some day we should see in India, " among other reforms, the establishment of courts of conciliation, whose special function it would be to preserve the people from any litigation at all, except that which was really unavoidable".

3. Act VIII. of 1859, the earliest Code of Civil Procedure, had been passed while the discussion of Lord Stanley's despatch was going on; and some of the North-Western Provinces officers had pointed hopefully to Sections 194, 243 and 244 of that Code, which authorised civil courts to order the amonnt of a decree to be paid in instalments, and to postpone the sale of land under certain conditions. When the Civil Procedure Code was extended to the Non-Regulation Districts of Oudh, the Central Provinces, and the Punjab, certain provisoes were added to the Code, whereby no sale of landed property in execution of a money-decree could take place without the previous sanction of certain superior judicial authorities in each case. As the Code of Civil Procedure had been the outcome of many years' discussion, and as it was without doubt infinitely superior to the laws or system which it superseded, the new Code was left to its operation for some years, without any further change in such of its provisions as related to the execution of decrees. There can be no doubt but that the working of this Code, together with other reforms in the local Courts and the local Bars, has produced great and beneficial change in the administration of civil justice throughout India.

4. In 1870 the question of the law of land sale again came before the Government of India, because the Judges

of the Punjab Chief Court felt doubts as to the legality of the Punjab Procedure, whereby under the provisoes to the Civil Procedure Code (see last foregoing paragraph) the sale of land in execution of decree for debt had been practically prohibited in the Punjab. In other Non-Regulation Provinces the provisoes had been differently worked, and sales of land in execution of money-decrees had been permitted. The Punjâb Government and many of their chief officers were opposed to any relaxation of the procedure that had been adopted in the Punjab, and declared their opinion that "the absolute sale of hereditary or joint-acquired property in land in execution of decree should be prohibited, and that no temporary alienation of land under Section 244 of the Code of Civil Procedure should exceed twenty years". The Judges of the Chief Court continued to act on the provisoes as previously interpreted in the Punjab; but, feeling doubts as to the legality of such a course, they asked that "this pressing question might soon be settled by legislative enactment".

5. In September 1870 the Government of India invited all the Local Governments in India to report upon the working of Sections 243-44 of the Civil Procedure Code, and on the effect which those sections had on the sales of land under decrees of civil courts. The replies to that circular are printed in the accompanying Volume of Selections; they contain many interesting statements of facts and opinions; and their outcome, so far as concerns the special question put in the Government circular, is that Sections 243-44 of Act VIII. of 1859 had been practically inoperative. It was represented, however, that further powers might advantageously be given, whereby executive officers, acting with the consent of the courts, might interpose to prevent the absolute sale of lands in execution of money-decrees, and the absolute ruin of landholders by such sales.

6. While this correspondence was going on, a petition was presented to the Governor General in Council by certain zemíndárs of the Allahabad District, who complained of the action of the civil courts on their class, and recommended certain specific remedies. Among the proposals strongly urged by these petitioners was the re-enactment of the old laws against usurious interest. Shortly afterwards the

question of restricting the sale of ancestral landed property in the Central Provinces formed the subject of Minutes by the Chief Commissioner (Mr. Morris) and some of his officers, who were then considering a draft "Tenancy Code" for those Provinces.

7. The opinions and recommendation recorded between 1870 and 1874 were under the consideration of the Government of India in 1874; and formed the subject of a Minute by Sir Arthur Hobhouse, which will be found at page 408 of the accompanying Volume of Selections. Sir Arthur Hobhouse suggested that if the facts were as stated in these papers, " sensible Judges, armed with a large power of moulding improvident bargains, and strengthened by a usury law in the background, might administer" a palliative to the evils which were said to exist. The final disposal of the matter was postponed by His Excellency the Governor General (Earl Northbrook) until the report of the Deccan Riots Commission should be received, because it was understood that the Commission were then enquiring closely into the relations between village money-lenders and the peasantry of the Deccan, and into the results, social and political, which flowed from those relations.

8. Meanwhile, the Code of Civil Procedure came under revision. The facts and opinions contained in the papers which form the accompanying volume, and also some* of the results of the enquiries by the Deccan Riots Commission, were considered by the Select Committee on the Bill. And the result of such consideration was that Act X. of 1877 (the revised Code of Civil Procedure) contained provisions for the protection of agricultural debtors, and for restricting the sale of land in execution of money-decrees thus —

* Though the Commission's report was not issued, some of the papers published with that report had reached the Government of India in a private shape.

Section 266, exempting from attachment in execution of decree—

(*b*) implements of husbandry and cattle of agriculturists;

(*c*) the materials of an agriculturalist's house or farm-buildings.

Section 287, requiring the court ordering sale of property in execution of decree to specify—

(*c*) any incumbrance to which the property is liable;

(*e*) every other thing which the court considers material to enable the purchaser to judge of the value of the property.

Section 291, permitting the officer holding a sale in execution of decree to postpone such sale, if he see fit, provided that he record his reasons for such suspension.

Section 305, empowering the court to postpone sale of land to enable the judgment-debtor to raise the amount of the decree against him.

Section 320, empowering the Local Government to prescribe rules for transferring to the Collector the duty of executing decrees in which land, or interest in land, is to be sold.

Sections 321-22, empowering the Collector, when execution of such decrees has been transferred, to put a reserved price on the property, and to take certain other steps in the interest of the judgment-debtor to save the whole or part of the property from permanent alienation.

Section 326, empowering the court to authorise the Collector to stay public sale of attached land.

Section 327, empowering the Local Government to make special rules for any local area imposing conditions (or restrictions) in respect of the sale of any class of interests in land in execution of money-decrees, where such interests are so uncertain and undetermined as to make it impossible to fix their value.

All these sections were enacted in the interests of the classes who own and occupy the land, and whose ignorance or embarrassments often prevent their contending in the law courts on equal terms with their creditors. The sections which established a modified law of insolvency for the interior of the country were also intended for the relief of honest, though improvident, agricultural debtors. The new

Code of Civil Procedure (Act X. of 1877) only came into force in October 1877; and as yet the Government of India has not received reports on the working of these sections. Two Local Governments (Bombay and the Central Provinces) have taken action under Section 327 restricting the sales of certain classes of landed interests in execution of money-decrees.

9. The latest papers in the volume relate to the project of law, which, at the instance of the Bombay Government, and with the approval of Her Majesty's Government, is under preparation for the relief of agriculturists in certain tracts of the Deccan. The Secretary of State has suggested that for other parts of India also the establishment of rural courts of conciliation might be considered; and he has recommended that some finality should be given to the decrees of local courts in petty cases, the money limit of finality varying with the class and calibre of each court. On these points the several Local Governments and High Courts have been invited to advise the Government of India. The accompanying Volume of Selections, with the present Resolution, is forwarded for the information of Local Governments, as it is desirable that they should be in possession of the opinions previously recorded on these topics.

(True Extract.)

C. BERNARD,

Offg. Secretary to the Govt. of India.

To Local Governments and Administrations.

CORRESPONDENCE REGARDING THE LAW OF LAND-SALE.

No. 4 (Judicial), dated East India House, London, the 25th January 1859.

From—Her Majesty's SECRETARY OF STATE for India.

To—The Right Honourable the GOVERNOR GENERAL of India in Council.

MY attention has again been directed to the subject of the disturbance by former proprietors of the rights in real property acquired by purchasers at sales made in execution of the decrees of the civil courts which is referred to in paragraphs 4 to 7 of the Public despatch of the Court of Directors dated 4th August, No. 113, 1858, and for the redress of which an Act No. XX. of 1858, passed by the Legislative Council of India, received the assent of the Governor General on the 18th May last.

2. The operation (with partial exceptions founded on family usages) of a law of equal succession, which in the case of ancestral property admits of no modifications by the exercise of a power of testamentary disposal in respect of proprietary rights in the soil (and such is the case wherever the succession to real property is regulated by the doctrine of the Mitákshara), has led in some instances to the extensive sub-division of landed estates, and in others to the joint-tenancy of a large number of sharers, and in both to the impoverishment of numerous families which once were considered wealthy. The members of such families unwilling to forego the position which their ancestors held resort to the Native banker; then follows the civil suit, and the sale of the debtor's property in execution of the judgment. A sale of real, and especially of ancestral, property, which either admits a new man to the possession of an old hereditary estate, or what is looked upon with still greater aversion, allows in the instance of a sale of a portion of the property a stranger to enter into coparcenary with a joint undivided family, is not in accordance with Native feelings, nor with the practice which existed under former Governments. The practice introduced under our administration has proved an element of weakness by transferring the property from the old hereditary families, to whom the tenantry were attached, to the mercantile classes, whom, as interlopers, they regard with dislike, and who in times of difficulty, while they look to us for protection, are unable to render us any assistance, or actively to co-operate with the Government authorities in the suppression of disturbance.

3. The difficulties arising from the unrestricted transfer of real property from the hands of the hereditary proprietors to those of new men under the proceedings of our civil courts scarcely admit of any alleviation in regard to past transactions. It is impossible to call upon those whose titles derive their sanction from the law as administered by our courts of justice to surrender all or any portion of the property which they have thus acquired, and no measures, either of legislation or administration, can be permitted, the effect of which shall be to impeach

the rights, or to invalidate the titles which the Government itself has conferred, and which it is bound to uphold.

4. It is possible, however, that the strong partiality for their old hereditary landlords, which during the recent disturbances has been manifested in many quarters by the tenantry of estates sold at public sales, may have given rise to a willingness on the part of auction purchasers to relinquish their purchases in favour of the ejected proprietors on receiving a fair compensation, and it appears to Her Majesty's Government that the district officers in the revenue branch of the administration may properly be instructed to take advantages of such opportunities as may offer of giving encouragement and assistance to parties desirous of coming to some arrangement for restoring the old proprietor to the peaceful enjoyment of his estate, and at the same time securing the auction purchaser from loss.

5. In regard to the future, however, while fully recognizing the impolicy of putting restrictions upon the ready transfer of property, Her Majesty's Government are of opinion that the circumstances are such as to call for the adoption of some palliative measures. The peculiar attachment of the landed proprietors to their hereditary estates, and of the tenantry to their hereditary landlords; the fact that the ousted proprietor almost invariably settles down as a tenant upon the estate which a little before was his own, and thus keeps alive the hostile feelings of the tenants against the person whom he regards as the invader of his property; and the consideration that nothing is so calculated to impair the loyalty and good will of the great and influential proprietary body of India as the direct and constant action of Government institutions in depriving them of their ancient possessions, all combine to make the case one of an exceptional character, and to press upon the Government the consideration of remedial measures, which under a different state of things might not have been called for.

6. It cannot be doubted that the increased powers in respect of suits relating to real property which of late years have been conferred upon the subordinate civil courts have greatly promoted the rapid transfer of such property from old to new hands. It was not until the year 1831 that Moonsiffs were empowered to try any suits but those for "money or other personal property", and up to that time those officers were "strictly prohibited from enforcing their own decisions and from issuing any process or using any coercive means for that purpose" for which an application to a higher authority was necessary. In that and subsequent years the powers of the Moonsiffs were greatly enlarged, and under the law now in force the civil courts of every grade are placed upon the same footing in regard to the description of suits which they are competent to try (subject only to certain pecuniary restrictions) and in regard to the execution of their own decrees. The check imposed by the necessity of a reference to a higher court has been removed, and the number of sales, if I am rightly informed, has lately very much increased in consequence of the exercise

Regulation XXIII., 1814, Section 13, Chapter 1.

Regulation XXIII., 1814, Section XLIV.

by a number of courts in every district of the power of ordering a sale which formerly could be exercised by only one or two. This result is not surprizing. The sale of an estate, or portion of an estate, registered in the Collector's books is the most ready way of enforcing a judgment: it gives the least trouble to both the creditor and the court, and holds out every inducement to both to resort to that mode of satisfying the decree in preference to any other even in the most trifling cases.

7. With reference to the foregoing remarks, the question arises as to the expediency of altering the existing constitution of the Moonsiffs' courts, and of reverting to the system under which they were tribunals for the adjudication of suits only "for money or other personal property", at the same time enlarging, if thought advisable, their jurisdiction in such cases. A further check might be imposed by providing that no process, either for attachment or sale of real property, shall be allowed in cases below a fixed amount, and that in suits exceeding that amount the Moonsiff shall not be competent to issue such a process without the previous sanction of the Judge.

8. I throw out these suggestions for your consideration, and request your early attention to the subjects of this despatch.

No. 571 A, dated Nynee Tal, the 5th June 1860.

From—GEORGE COUPER, Esq., Secretary to the Government of the North-Western Provinces.

To—The Secretary to the Government of India, Home Department.

IN reply to your letter No. 444, dated the 9th March 1859, I am directed to forward the correspondence as per margin in original, together with the accompanying Minute by His Honor the Lieutenant-Governor, on the subject of the unrestricted sale of land in execution of the decrees of the civil courts.

The return of the original enclosures is requested.

From Register, Sudder Court, North-Western Provinces, No. 829, dated 16th May 1859.
From Secretary, Sudder Board of Revenue, North-Western Provinces, No. 291, dated 29th April, and enclosures.
From Commissioner of Meerut Division, No. 17, dated 12th May 1859.
From Commissioner of Agra Division, No. 138, dated 17th May 1859.
From Commissioner of Rohilcund, No. 208, dated 26th May 1859.
From Commissioner of Allahabad, No. 241, dated 14th April 1859.
From Commissioner of Benares, No. 42, dated 1st June 1859.
From Commissioner of Jubbulpore, No. 148, dated 29th April 1859.
From Commissioner of Jhansie, No. 859 R, dated 26th April 1859.
From Judge, Saugor and Nerbudda Territories, No. 61, dated 14th April 1859.
From ditto, Cawnpore, No. 89, dated 27th April 1859.
From ditto, Furruckabad, No. 74, dated 12th March 1859.
From ditto, Bareilly, No. 4, dated 9th May 1859.
From ditto, Shajehanpore, No. 178, dated 22nd April 1859.
From ditto, Mirzapore, No. 56, dated 28th April 1859.
From ditto, Ghazeepore, No. 60, dated 10th May 1859.
From Collector of Moradabad No. 1, dated 19th May, and enclosures.
From ditto, Boolundshuhur, No. 2, dated 12th April 1859.
From ditto, Etawah, No. 58, dated 4th April 1859.
From ditto, Banda, No. 735, dated 25th April 1859.
From ditto, Cawnpore, No. 153, dated 13th May 1859.

Minute by the Honourable G. F. EDMONSTONE, *dated Nynee Tal, the 26th May* 1860.

From the Government of India, in the Home Department, No. 444, dated 9th March 1859, enclosing a despatch from the Right Honourable the Secretary of State, No. 4, dated 25th January 1859, on the subject of the sale of land in execution of decrees of the civil courts for debt.

THE despatch from the Right Honourable the Secretary of State relates to the unrestricted sale of real, and especially ancestral, property in execution of the decrees of the civil courts for debt.

2. Her Majesty's Government, while fully recognizing the impolicy of putting restrictions on the ready transfer of property, regard the case as one of an exceptional character, and press upon the Government of India "the consideration of remedial measures".

3. This important question had been to some extent anticipated in paragraphs 4 to 7 of the despatch from the Honourable the Court of Directors, No. 113, dated 4th August 1858, and the Reports which were submitted by the Sudder Court* and the Member of the Legislative Council† for the North-Western Provinces on the requisitions addressed to them will be sent forward.

* No. 1457, dated 24th December 1858.
† No.——, dated 22nd December 1858.

4. But it was not until the receipt of the despatch from the Right Honourable the Secretary of State that means were taken to collect the opinions of the local officers most competent to form a judgment. These have been before me for a much longer period than I could have desired, and I will only express a hope that the extreme importance and difficulty of the question referred for consideration, together with the heavy pressure of duties connected with the administration of these Provinces, will be accepted as a sufficient excuse for the delay which has occurred.

5. I propose, in the first instance, to touch briefly on the subordinate points which claim attention, reserving, until these shall have been disposed of, the remarks which I desire to offer on the main question.

6. The question of Hindoo law, which is raised in the Honourable the late Court's despatch, may be briefly passed over. Lord Stanley, adverting apparently to this, observes that the state of things caused by the operation of the civil courts in the unrestricted transfer of real property from the hands of the hereditary proprietors to those of new men scarcely admits of alteration in regard to past transactions.

7. It is impossible for the Government to countenance any measure, the effect of which shall be to invalidate titles which the Government itself has conferred. That the rights acquired by purchase at public sales have been considered to be unquestionable, and that the precepts of the Mitákshara have not been regarded as barring the alienation of ancestral property by courts of justice is sufficiently proved by the fact that no civil action has ever been brought in our courts to contest

a public sale on that ground. This may have been due in some measure to unacquaintance on the part of those concerned and their advisers with the ancient rescripts in question; but even if the point had been submitted to judicial decision, it seems very improbable that "the proof of necessity", which puts the alleged illegality aside, would have been wanting. The provision of funds for the marriage of a daughter, or for the performance of funeral obsequies, or other observance regarded as equally imperative, could and would always have been urged as the "necessity" for incurring debt, and the obligation of a debt once created, the exception would be established.

8. But, as above remarked, the title conveyed by a public sale has been viewed both by the civil courts and by Hindoos as unquestionable. And if the practice under which the transfer has been considered no less absolute in regard to the rights of heirs than the rights of the debtor has been at variance with any principle of Hindoo law, it is a fair inference, from the absence of all dispute on the point, that the principle itself has become obsolete.

9. On this ground, therefore, there is no valid reason for the interference of Government, and the past must, I think, be held to be irremediable.

10. Lord Stanley, however, in the 4th paragraph of his despatch suggests that the district officers might be instructed "to give encouragement and assistance to parties desirous of coming to some arrangement for restoring the old proprietor to the peaceful enjoyment of his estate, and at the same time securing the auction purchaser from loss".

11. Of all the officers who have been consulted there are but one or two who are disposed to accept this suggestion. Mr. Batten, the late Officiating Commissioner of Rohilcund, "is far from thinking it a hopeless task for the Collectors of districts to attempt amicable arrangements by which timid auction purchasers may get rid of their uncomfortable property, and by which its re-transfer to the old hands may be effected". And Mr. Hume, the Collector of Etawah, states that "compromises of the nature alluded to are by no means uncommon among the Natives themselves". It is his belief that "at least 12 per cent. of landed properties sold by auction find their way back to the original proprietors within three years entirely by private compromise"; and he adds that "in (say) 90 per cent. of cases in which the transfer was not more than from seven to ten years old, in which the lands were still held by the original transferree, and in which the old proprietors had the means to make a fair offer", he "could at once effect a compromise".

12. With these two exceptions there is hardly any difference of opinion as to the hopelessness of such compromises, and the impolicy of attempts being made by the officers of Government to effect them. The general impression is that there is no inclination on the part of purchasers to relinquish the rights which they have acquired, and

such, it seems to me, must be the common feeling. Land is the investment which every capitalist seeks as the safest, and as yielding a fair return. The possession of land is what every native of this country desires, as giving to him a recognized status and a sure influence in the district of his residence. Whatever else may happen to him, his landed property is secure, so long as the easy demands of the Government continue to be punctually liquidated, and it remains as the heritage of his children.

13. But it is not only the disinclination of the auction purchasers that must be overcome. The ejected proprietor must have the means to pay a sum which shall secure the auction purchaser from loss. This is a condition which even Mr. Hume, sanguine as his expectations are, has not overlooked, and it is a condition which I apprehend could be in very rare instances fulfilled. The ruin of the hereditary proprietor is complete before his land is sold. The unrelenting action of the civil courts ejects him from his property, and reduces him to the condition of a mere tenant-at-will. In ninety-nine cases out of a hundred he is rack-rented, and unable to take to other than agricultural occupations: he has no means of improving his circumstances, and having no tangible security to offer, he has no credit, that he should be able to borrow, or, if he should perchance be able to take up money for the recovery of his ancestral property on the hypothecation of that property itself, he would do so only on terms which would very shortly throw him back into his old position.

14. There may be in the Etawah District special circumstances which make auction purchasers willing to surrender their newly-acquired rights; but I must accept the almost universal testimony on the other side as proving that auction purchasers generally are not so inclined, and express my belief to be that the restoration of the old proprietors "to the peaceful enjoyment of their estates" cannot be looked for by reason of any amicable settlement between them and the parties who have come into possession of their ancestral rights.

15. Whether such compromises could be effected with the assistance of the district officer is another question. It is possible that in cases in which the ousted proprietor possesses the means to satisfy the demands of the auction purchaser the influence of the Collector might not be unavailing; but I strongly deprecate any action of this kind on the part of the Government.

16. I am persuaded that any such interposition would be construed into a desire on the part of the Government to repudiate the titles which have been acquired under the operation of its own laws, and I can hardly think, having regard to the suspicious and sensitive nature of the people, that such an inference would be unreasonable.

17. If the auction purchaser is willing to surrender his property, and the former owner is desirous to recover it, and has the means of paying an equitable compensation, it is not to be supposed that the two parties cannot come to an amicable composition. The transaction is a

transaction between man and man, and both parties being agreed as to the issue, an equitable bargain, or in any event a bargain with which both parties are content, will be struck. What need then of the intervention of the officers of Government, except to force an issue which the Government desires to effect. This is the question that will be asked, and it will be answered by every auction purchaser in one way only. Without any doubt he will be impressed with the belief that it is the wish and the intention of Government to coerce him into a surrender of his purchased property into the hands of the ejected owners; and in numerous cases this understood wish will be construed into an order: the property will be given up on compensation settled by the district officer, and the man will be unalterably convinced that he has been swindled out of his property. And even if the auction purchaser should give the Government credit for better motives and juster intentions, he would not unfrequently be induced to relinquish his property by the apprehension, if not the certainty, that the encouragement given to the old proprietors would intensify their opposition, and make the profitable management of the estate impossible.

18. So much in regard to past transactions.

19. The possibility of *future* remedy is a more important branch of the enquiry suggested in Lord Stanley's despatch.

20. In the 6th and 7th paragraphs of that paper there are three suggestions, having for their object the prevention or rather the diminution in the number of sales in execution of decrees for debt:

1st.—That the Moonsiffs be restricted to the trial of suits for "money or other personal property" as before 1831.

2nd.—That the Moonsiffs be "prohibited from enforcing their own decisions", whereby the permission of the Judge to a sale of real property in execution would be made necessary.

3rd.—That "no process, either for attachment or sale of real property, shall be allowed in cases below a fixed amount".

21. I do not see how the object in view is to be reached, or even promoted, by the first of the measures suggested. Whether, with reference to distinct considerations, it is desirable to restrict the powers of the Moonsiffs as proposed, is a separate question which does not call for discussion here. But it seems obvious that the adjudication upon a contested claim to proprietary right in land is a very different thing from the compulsory alienation of such right in execution of a money decree, and that the withdrawal of the authority to make adjudication on such claims cannot have the least effect in reducing the number of sales for the realization of judgment debts.

22. In regard to the second, I am compelled to dissent from the high authority of the Sudder Court, who advocate it, to the extent at least of requiring that no sale of real property shall be made in execution of decree for debt, save with the previous permission of the Judge.

One of two consequences, it seems to me, would inevitably follow: either the Judge, being made responsible for the issue, would feel it incumbent upon him to satisfy himself as to the justice of the Moonsiff's decision by a laborious examination of the record, or a more laborious re-investigation of the claim, and even then he would be at a loss (the law remaining unaltered) as to the principle which should guide him in determining whether sale of real ancestral property should be permitted or not. Or the reference would be perfunctorily considered, and permission to sell would be given or withheld, as a matter of course, according to the individual views and tendencies of the referee, a distinction probably being for the most part observed between ancestral and acquired property.

23. Much additional labour would be thrown upon the Judge if he were required to examine each case thoroughly and himself to direct the several processes to be observed in execution; and after all the law being unaltered, the ultimate issue would probably be the same. And if no such obligation were to rest on the Judge, the previous reference to him would be nugatory.

24. There may be other reasons perhaps, as indicated in Mr. Reade's Minute, for requiring that the Moonsiffs, instead of addressing their precepts direct to the Collector, should make the European Judge the channel of communication; but this practice would not, in my opinion, tend in any material degree to reduce the number of sales of real property in execution of decree, and that appears to be the sole object with which the suggestion is offered by the Right Honourable the late Secretary of State.

25. The third innovation appears to me inadmissible. I cannot perceive upon what principle the prohibition of sales of real property for the realization of small debts, and the allowance of them in execution of decrees of court for large amounts, can be defended. The interest of the judgment-creditor in the one case may be just as important relatively to his means as in the other, and though it must be admitted that the sale of real property for debt—at all times a great evil in this country—is even more to be deprecated in the case of small debts, where the purchaser would ordinarily enter into a co-parcenary with a joint undivided family, I cannot think that an equitable remedy is to be found in an unequal operation of the law. In all cases the same process of execution should be allowed.

26. Having thus noticed, as I proposed, the subordinate points which are suggested for consideration in these papers, I proceed to place on record the opinion which, after much consideration, I have formed on the main question.

27. In the papers which will accompany this Minute will be found a great variety of opinions. Some officers advocate the absolute and unqualified prohibition of the sale of lands (whether ancestral or acquired) in execution of decrees for debt. Others strongly oppose the imposition of any restrictions whatever on such sales. Others (and

they form a large majority) are in favour of intermediate process being allowed, such, *e. g.*, as temporary transfer of farm for a limited period of years, as now preferentially enforced in the realization of the land revenue.

28. I must confess that two or three years ago I should have been disposed rather to agree with those who would hold land entirely exempt from sale in execution of money decrees than with any other class; but more recent experience, gained in a larger sphere of action, and further reflection have tended very materially to alter my views.

29. It can hardly be contended that to sell the real property of a debtor for the recovery of a debt which he is unable otherwise to liquidate, or which he wilfully neglects to satisfy, is in the abstract unjust. The obligation of a debt cannot be denied, and viewed in the abstract, there is no reason why he who has incurred it should not be held responsible in his real property as well as in the goods and chattels of which he may be possessed. In point of fact, it seems to me that no distinction can be equitably made between the public and private creditor, and that, while sale of proprietary right in land for realization of the Government revenue is allowed, the like process in satisfaction of a judgment-creditor's dues cannot be absolutely denied.

30. The objections made to such alienations in this country rest apparently on political and economical grounds.

31. The objections seem to be—

1st.—That the practice not being in accordance with Native feeling, nor with the customs of Native Governments, produces discontent, and impairs the loyalty and good will of the old hereditary families.

2nd.—That under its operation these influential families are supplanted by interlopers of the mercantile class, who are viewed with dislike by the tenantry, and in times of difficulty are unable to aid the Government in the suppression of disturbances.

3rd.—That indebtedness is encouraged among the people by the ready and adequate security which the land offers.

32. Others may be stated, but these are the principal objections.

33. Now it cannot be denied that during the disturbances of 1857-58 the auction purchasers of landed estates in these Provinces were generally ejected from the possession of their acquired rights by the former proprietors, and from this the discontent and disloyalty of the latter may be inferentially ascribed to the "direct and constant action of Government institutions in depriving them of their ancient possessions". But, on a wider view, it must be admitted that the forcible extrusion of the interloping purchasers could not have been attributable to the operation of this cause only. For in Bengal the practice which it is sought to condemn prevails at the least to the same extent as in these Provinces, while sales for realization of revenue, which

are no less opposed to Native feeling than sales in execution of decrees, are much more absolutely and relentlessly carried out than here; yet, whatever the natural dissatisfaction arising from the alienation of ancestral lands, the loyalty and the good will of the people were not impaired; or, to speak more precisely, there was no overt manifestation of disloyalty among the people of Bengal Proper. *That* was confined to Behar, the people of which are of the same classes, character, and creed, and have the same customs as those found in these Provinces and Oudh.

34. Again, to take an instance the other way, there is no part of the country where disturbances were more universal, or were more indubitably traced to the resident population, or where disorder continued so long prevalent, as the districts of the Jhansie and the Jubbulpore Division; and yet in no districts of those divisions, Humeerpore alone excepted, is there any recognized right of property in the land, and of course no sale of rights in land, whether for realization of revenue, or in execution of civil decrees, has ever occurred. Those districts were first as seriously and generally disturbed as the districts of Banda and Humeerpore, where the practice in question does prevail; and this is all the more remarkable, because many of the landholders in the Jubbulpore and Jhansie Divisions, besides enjoying exemption from process against their lands in satisfaction of their debts, hold on privileged tenure known as "oobaree", and pay a mere quit rent.

35. It seems to me therefore that, however true it may be in theory, that the loyalty and good will of the people must be impaired by "the direct and constant action of Government institutions in depriving them of their ancestral possessions". The events of 1857-58 do not justify the inference that the disturbances in these Provinces were aggravated by the operation of that cause. The restraints of law and authority were withdrawn: the prevailing impression, I believe, to have been that our rule was extinguished, and just as the viler classes of the population took to indiscriminate plunder and violence, so the old proprietors took the opportunity of resuming possession of what had ceased to be their property, only under the execution of a law and a system which were in complete abeyance, and, in their belief, had come to an end.

36. The second proposition is one that can hardly be denied. It is certain that the old hereditary landholders do exercise an influence in their own villages and in their neighbourhood such as the new men belonging to the mercantile classes can seldom acquire, and that they are consequently better able to support the Government in time of difficulty. In a political sense, therefore, it is for the interest of Government to protect the old hereditary proprietors in the possession of their ancestral estates, and to maintain in their integrity the co-parcenary communities which are found, more or less, in all the districts of these Provinces.

37. But the question arises whether the Government is warranted in working out a political end by legislation, the justice of which, as

it seems to me, can hardly be defended; and this question, I apprehend, can be answered in one way only. If it be a true and a just principle that the whole of a man's property is liable for his *bonâ fide* obligations, I do not see how the Government can, with propriety, violate that principle, and deprive creditors of the ultimate security for recovery of their loans, in order that the hands of the executive may be strengthened.

38. Again, whether, in an economical point of view, the transfer, which is gradually going on, of lands into the hands of capitalists, is an unqualified evil, must be doubted. In theory, at least, it must be held to be beneficial to the interests of agriculture and commerce, and to the general prosperity of the country; and many instances I have little doubt could be cited in which the improved management and the larger resources of an intelligent and enterprizing capitalist have produced very satisfactory results. "There can be little doubt", as Mr. Strachey says, "that the new proprietors are generally men of greater wealth and intelligence than their predecessors. The greatest possible of evils in any country is, that the proprietors of land should be unable to undertake any works for its improvement, and the curse of landholders impotent for good is doubly heavy in a country which is almost entirely an agricultural one".

39. Passing on to the third proposition, I must express my belief to be that, were the sale of lands for recovery of debt absolutely prohibited, there would be no diminution of indebtedness among the people. The only effect would be greater recklessness on the part of borrowers and greater rapacity on the part of the money-lenders. In the Saugor and Nerbudda territories (Jubbulpore), where the land is not liable to process of attachment and sale, the pecuniary embarrassments of the people are said to be excessive beyond comparison, greater than those of the landholders in these Provinces. There, to use Mr. Reade's words, "recklessness and dishonesty have no bounds. There is no sense of liability. Whatever may be the terms of a loan, they are accepted. The tenure of the land is safe, so long as the Government lien is discharged. The creditor cannot oust, and, sooner or later, is glad to make a compromise. Thus capital is expended on personal gratification. Agricultural enterprize, if it does not recede, does not pass over traditionary bounds. There is no improvement, no progress".

40. In the District of Neemuch, too, where similarly proprietary right in the land is not recognized, the same state of indebtedness among the landholders obtains, and these two instances afford the strongest possible presumption that, were the alienation of land for recovery of debt put a stop to, there would not be one debtor the less among the landholders of these Provinces. They would borrow, nevertheless, but at more exorbitant rates of interest than even now are extorted from them.

41. The impoverishment and indebtedness of the landed proprietary may be due in some measure to the Hindoo law of equal succession,

and to the consequent minute sub-division of the land, althoug there are some (*e. g.*, Mr. Strachey) who see no reason to suppose tha the land is more sub-divided now than it has been for centuries. Bu I am inclined to think that this state of indebtedness is much mor justly attributable, as Mr. Strachey observes, to "the pressure o our revenue system". Mr. Strachey's view as to the effect of ou revenue system, in bringing the old proprietors into difficulty, will b seen on reference to the valuable memorandum which he has furnished as will also the practical measures which he recommends. Thes well deserve consideration, but it is not in connection with the question now before me that they can be appropriately discussed. It wil be more pertinent to remark that this able officer, while he admits the evils that are complained of, is of opinion "that we shall be running into something much worse if we attempt to remedy them by placing restrictions upon the transfer of land".

42. Another cause no doubt of the pecuniary embarrassment of landholders, and the consequent alienation of their ancestral property, is their ignorance and improvidence, and the knavery and rapacity of the professional money-lenders. Funds are wanted as an advance for the payment of revenue, or for the celebration of a marriage. The money-lender is resorted to, and the necessities of the borrower enable him to dictate his own terms. Enormous interest is stipulated for, and a mortagage on the landed property of the borrower is demanded. Time passes; interest accumulates; the borrower is forgetful of consequences; the lender, ever watchful,. waits his opportunity, and when the debt, with interest on interest, has amounted to a sum about equal to the value of the hypothecated property, the machinery of the civil courts is called into action, and the ruin of the borrower is consummated.

43. A striking instance of this kind is given in the letter from Mr. C. Currie, the late Officiating Collector of Boolundshuhur, and there is not a district in which very brief enquiry would not discover dozens of similar cases. It is deplorable that knavery of this kind should be rampant, and that its success should be due in great measure to the action of our own institutions; but the remedy does not lie in placing restrictions on the transfer of landed property.

44. From what has been said it will be seen that I am more disposed to concur with those who oppose the imposition of any restrictions on the sale of land in satisfaction of debts than with those who would abolish the practice altogether. The just principle is that the whole of a man's property is liable for the liquidation of his *bonâ fide* debts, and it is important that the principle should be maintained. It is on this principle that the land is held to be hypothecated for the Government revenue assessed upon it; and whatever the intermediate processes now preferentially adopted for the realization of the revenue, it is the proprietary right in the land itself which is looked to as the real security, and its sale as the ultimate means of coercion. There is no just ground of distinction between the public and the private creditor,

and, unless the lien of Government upon the land for its revenue be relinquished, the sale of land, under whatever conditions, in satisfaction of private debts, must be permitted. The Government, it is obvious, cannot, with any prudence or safety, give up the security.

45. The point then which remains to be considered is, whether any, and what, intermediate processes may be unobjectionably followed in the execution of decrees for debt. And here I think it proper to invite attention to the able letters of Mr. F. B. Pearson, dated the 14th and 27th April 1859, in which he contends that the sale of land under judicial decrees should be in no wise restricted, and that the temporary transfer or sequestration of landed property are no less indefensible on principle than the prohibition of its sale.

46. On the other hand, it is argued that "attachment and temporary transfer or farm are found effectual for the recovery of arrears of revenue, and there is no reason why they should not, where the debtor's title is full and perfect, prove equally efficacious for the recovery of debts".*

*Minute by Mr. Muir, Junior Member, Sudder Board of Revenue, North-Western Provinces, dated 2nd February 1859.

47. Mr. Muir accordingly recommends—

1st.—That for all simple (unsecured) debts the process of the civil courts should be limited to the person and personal effects of the debtor.

2nd.—That for the execution of decrees on account of debt secured by hypothecation of land the property should be transferred for a term of years not exceeding fifteen, on payment by the transferree of such sum, at once or by instalments, as shall cover the debt, or that the decree-holder should be put in possession for such period as that the usufruct should make good to him his claim.

3rd.—That if the revenue officer should be unable to arrange for the adjustment of the debt in this manner, either the court should proceed to the sale of the hypothecated land, or that the case should be treated as one of insolvency.

48. The views of Mr. Reade, the late Senior Member of the Board of Revenue, and of some other officers who have been consulted, are in general accordance with those of Mr. Muir, and I regard them with great respect.

49. But I fail to see how Mr. Muir's proposed limitation of the process of the civil courts to the person and personal effects of the debtor in cases of simple debt is reconcileable with the opinion which he has expressed in the 14th paragraph of his second Minute, dated 20th April 1859, that no distinction can be "justly drawn from the *amount* of the debt". For my part I cannot see that the property of a debtor is less responsible for an unsecured debt than for a debt secured by hypothecation of land. Whether the debt be small or large, secured

or unsecured, the obligation incurred by the debtor is the same; the right acquired by the creditor is the same; and I can conceive no reasonable principle on which the application of different processes for a realization can be defended.

50. I would therefore reject the first of Mr. Muir's proposals, although I observe the Sudder Court concur it it.

51. In his second proposition, and indeed in his original principle, Mr. Muir, and those who agree with him, seem to have overlooked one point of essential difference between the public and the private creditor. The former has power under the law to bring the land to sale at once for the realization of its dues; but on administrative considerations, which need not be touched upon here, he *consents to forego* the privilege, and to accept the intermediate process of temporary transfer or farm, or even kham management, by which his demand, whether at once or by instalments, will be realized. To the latter, the private creditor, namely, it is not proposed to give the like option. To put the public and the private creditor on an equal footing, the *consent* of the latter should be obtained to the transaction. If the property should be transferred to another than himself on immediate payment of the amount of the decree, the private creditor could make no reasonable objection, but he might very reasonably, and it may be expected very frequently would demur both to accept payment by instalments, and himself to take possession of his debtor's property for a limited period, on the condition that within that period he should repay himself from the usufruct, and that on the expiration of the term of occupation his claim should become absolutely defunct.

"Attachment and temporary transfer or farm are found effectual for the recovery of arrears of revenue, and there is no reason why they should not, where the debtor's title is full and perfect, prove equally efficacious for the recovery of debts."

52. Moreover, in regard to the first of these processes, it must be observed that a secured creditor seldom sues for the recovery of his debt until it amounts nearly, or even entirely, to the value of the property which is hypothecated for its repayment; and if his object be to obtain proprietary possession of the land, he will always play the waiting game. In such cases it is hardly to be expected that any person will pay the whole amount of the decree, either at once or in instalments, because, while paying the whole value of the property, he will acquire only a right of temporary occupation, and even if a consenting transferree should be found, his management will be made entirely subordinate to the recovery of his own disproportionate advance, every cultivator will be rack-rented, and the property will suffer injury, which it will require years of nursing to remove.

53. Then as to occupation being given to the decree-holder, it must not be forgotten that the same process of rack-renting will go on as in the other case, and, unless it be absolutely stipulated that the creditor's claim dies with the expiration of the period for which the property may be made over to him, there will be no end to litigation a

to the profits which he has derived from his occupation, and the proportion which they bear to the amount of his original claim.

54. It is only proper to note that these several proposals were submitted by Mr. Muir before Act VIII. of 1859 was finally settled and became law.

55. In his second minute Mr. Muir has noticed the provisions of that Act (Sections 194, 243 and 244) which affect the practice of the courts in relation to sale of land in execution of decree, and has observed that "they do not go far enough, and are neutralized by conditions". This is not altogether correct. Section 194 imposes no other condition on the execution of a decree for the payment of money by instalment payments than that the court shall see "*sufficient reason*" for so ordering. The condition prescribed by Section 243 seems to be reasonable, namely, that "the judgment-debtor shall satisfy the court that there is *reasonable ground to believe* that the amount of the judgment can be raised by the mortgage of the land", &c., &c. In regard to Section 244, I must admit the validity of Mr. Muir's objection, and I would advocate the excision of the words quoted in the margin. As Mr. Muir says, "a judgment-debtor, with a compulsory sale of his ancestral property impending, is little likely to be in a position to produce substantial security for the amount of his debts, or for the full value of his property". While this condition remains, the section must be nugatory. If this be removed, the provision may become operative, and the degree of interference which it sanctions would be beneficial. I should have thought myself that the preliminary consent of the creditor might have been thought necessary, but as the Legislature have not required this in the cases provided for by Section 194, the satisfaction, namely, of a money decree by instalments, it may in fairness be equally dispensed with in the cases which fall under Section 244.

"On security for the amount of the decree, or for the value of such land or share being given."

56. The mere removal of the condition above noticed, as neutralizing Section 244, would not, I believe, prejudice the interest of the creditor. They would be safe in the hands of the Collector. That officer would not make unreasonable objections to the sale, nor would he use this provision of the law as an instrument for the furtherance of his own views (supposing them to be opposed to such sales), nor would he, without due enquiry and ascertainment of annual profits derivable from the property in question, certify that "satisfaction of the decree may be made within a reasonable period by a temporary alienation" of the same.

57. But in the way of measures preventive of sale, it seems to me inexpedient (for the present at least) to go beyond the provisions of the law which have just been considered. They have not yet been in force for a twelve month, and it is desirable that their operation should be

watched, and their effect tested. It seems to me advisable only in addition to enact or to prescribe—

1st.—That in the execution of all decrees for money process shall be in the first instance directed against the movable property of the judgment-debtor,* and that only in the event of such being ineffective, shall process issue against ancestral property in land or the usufruct thereof.

* Houses, gardens and lands unassessed might follow the law of personalty. Property in land acquired by purchase need not, I think, be regarded in the same light with ancestral property, or be so tenderly dealt with.

2nd.—That before putting up a property to sale, the Collector should be required to make a careful valuation of it, and expose it to sale at the upset price of that valuation. If sale should not be effected, he should revise his valuation, and then sell absolutely.

3rd.—That authority be given to the Collector to investigate and decide summarily all claims to lien on the property about to be sold, and that he be required to make such investigation and decision before sale, so as to give to the purchaser a defined and tangible right.

58. It will be fair, too, as recommended by Mr. Reade, to require every decree-holder, for whose benefit land is to be sold, to deposit a sum not exceeding 10 per cent. on the amount of his decree, to compensate the Government for the expense which it incurs on his account in bringing the land to sale. As Mr. Reade points out, this is the only process of execution which costs the decree-holder nothing, while in the way of establishments employed and time occupied, it costs the Government a good deal, and there is no reason for this exemption. Such a demand cannot be reasonably denounced as an impediment thrown in the way of execution; it would be merely an equitable payment by the decree-holder for his sole benefit.

G. F. EDMONSTONE.

Memorandum on the sale of landed property in execution of the decrees of the Civil Court, by W. MUIR, *Esq., Junior Member, Sudder Board of Revenue, North-Western Provinces,—dated Allahabad, the 2nd February* 1859.

Letter of Government No. 1635, dated 20th October 1858.

BEFORE submitting my opinion on this subject, I may be permitted to refer to certain proposals which I had the honour to submit (in the absence of my colleague) as Officiating Member of the Agra Board, to

Government in 1856, with the view of restricting the present practice of facile and unlimited sale of land for money decrees.

2. Mr. W. Edwards in his revenue administration report of Budaon for the year 1855-56 commented at great length on the rapid transfer of property by such sales, and submitted several instances of the summary auction of estates on account of trifling debts. The remedies proposed by him, viz., more careful resort to distraint, and limiting the power of sale to the appellate courts, seemed to me inadequate. And as in my opinion "there could be no question that much injury was done by the indiscriminate and peremptory sale of landed property, whatever be its relative value to the sum decreed", I ventured to propose what appeared to me would be a more effectual remedy instead of executing a decree for money, by ordering the summary sale of the defendant's land. I suggested that the "court might be directed to call upon the Collector to realize the sum decreed by any minor process involving only temporary extinction of proprietary right; and if this proved impossible, then that the Collector should report the circumstances before proceeding to sale. Attachment and temporary transfer or farm", I remarked, "are found effectual for the recovery of arrears of revenue, and there is no reason why this should not, where the debtor's title is full and perfect, prove equally efficacious for the recovery of debts".

3. The original correspondence has been destroyed, but an extract from the Board's Proceedings containing the substance of the portions of the address in question, and the orders of the Lieutenant-Governor in reply, is attached to this note.*

* See Appendix A.

4. The suggestion, it will be observed, was referred by the late Lieutenant-Governor, Mr. Colvin, for the consideration of the Sudder Court, and on their reply it was dropped.

5. I need not say that my opinion of the injury done by these sales has received grave confirmation from the events of the intervening period. The passing of landed estates into the hands of mere speculators, without local influence or connexion with the soil, was always regarded as a serious disadvantage. It ousted from their ancestral lands those who by their natural position could best manage them, and be made instrumental in aiding the administration, and it substituted a set of men who were often unable even to maintain themselves in secure possession, and for all administrative purposes were far less responsible and less useful proprietors. In addition to this, we have now had universal proof that the moment the authority of Government is suspended, the old proprietors re-assert their foregone rights and oust the upstart intruders.

6. This has been equally the case, I believe, where the sale has been a direct transaction by consent of the former proprietors. It is not therefore an indubitable proof that such sales are regarded by the Natives as unjust. It is simply a fresh illustration of the tenacity with

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which mankind all the world over cling to their ancestral acres, and when the check of authority is removed, a proof of the temptation that exists to resume the alienated birthright. The new owners brought in by our system were generally, as I have said, men without local power or influence; they could often hold their own position only with difficulty in times of peace; and when all restraint was gone, they were naturally the first objects of lawless outrage.

7. But whether regarded by the Natives to be right or to be wrong, the practical result of these sales has been equally disastrous. They contributed seriously to the embarrassment of Government and to the confusion and disorder of the days of anarchy. This proved an eminent source of weakness. This is a fresh argument against the present system, superadded to the evils that were already felt to call for the adoption of all possible means for checking the frequency of sales and permanent transfers.

8. I am of opinion that a material restraint upon these sales may be devised without injustice and in complete conformity with the habits and prepossessions of the people, and that debts may be to a great extent adjusted without resort to sale.

9. I would not place any restriction on the direct and voluntary alienation by proprietors of their land, or on the action of the courts in enforcing deeds of such alienation. But I would confine the action of the courts, so far as causing permanent alienation, strictly to cases of absolute sale by the proprietor's own act.

10. I entirely concur in the principle proposed in the letter of Government indicated at the beginning of this memorandum. For all simple debts I would limit the process of onr courts to the person and personal effects of the debtor, and entirely exempt land from liability in the execution of the decree. Houses with gardens and other plots of ground attached to them in cities need not necessarily be classed with landed estates, but might follow the law of personalty.

11. For the execution of decrees on account of debts secured by the hypothecation of land, the following process might be adopted: At the stage when the Collector under the present system is directed to bring the property to sale, a precept might issue to the Collector, desiring him to provide for the liquidation of the decree by any disposition of the hypothecated property not extending beyond fifteen years. The Collector would thus be at liberty either to transfer the property for a term of years on payment by the transferree of such sum, either at once or by instalments, as would cover the debt, or to place the decree-holder in possession for such period as by the usufruct would fairly make good to him his claim.

12. Supposing the Collector unable to arrange for the adjustment of the debt in this manner, he would make a return to the precept accordingly.

13. At this stage two courses are open.

14. (1.) The law might either authorize the court to proceed to the sale of the hypothecated property thus irretrievably burdened. This, however, should not in any case be done until endeavour has been made to realize the claim from the personalty of the debtor. A summary enquiry should also precede the sale, as in the Punjab system, to clear away or define the title of other claimants in the property to be sold.

15. (2.) Or the case might be treated as one of insolvency, to be adjusted by the best practical disposal of the debtor's property, including among the assests the usufruct of the hypothecated land for fifteen years. Where there may be more than one debt secured by hypothecation of the same property, priority of the transaction might give priority of claim, or priority of registry might confer a preferential right.

16. I myself would prefer the second course.

17. I am averse to carry into effect through our courts the permanent alienation of land, excepting in cases where the terms of the alienation imply a direct, absolute, and perpetual transfer.

18. Where an owner creates a simple lien, or even a lien involving prospective conditional sale, I would limit the action of the courts to aiding the realization of the debt from the proceeds or usufruct of the property for a limited term. I believe that in all such cases nothing more was in the intention of the mortgager than that the income of the property should for a term of years be devoted to the liquidation of the debt. And I would not enforce more by our courts. I believe that this will be quite in accordance with Native habits and principles. The lender will feel that nothing short of a direct voluntary sale can secure for him more than the usufruct of the lands for a limited term, and he will have to look to his own interests in restricting his loans accordingly.

19. Where in addition to creating a recorded lien upon his land the owner has resigned his land into the possession of the mortgagee, the procedure would be analogous. There would be no foreclosure to be enforced, as at present, by our courts on the suit of the mortgagee. The only cause of action would then be on the part of the mortgager to secure on adjustment and restoration to possession. I would admit such suits on the same principles as those above indicated, and would limit the lien of the mortgagee after such suit to fifteen years from the date of the mortgagee's suing.

20. I have named fifteen years—as the period must of course be arbitrary—and that term is already familiar under the law of farm and transfer under Regulation IX. of 1825 and I. of 1841.

21. I would give very short notice before enforcing the provisions I have proposed. It may be said that injustice will be done, as money may have been lent on the implied, though not expressed, security of the land. But I do not think there is much in the argument. There may possibly occur a few cases of hardship. But there would be more evil

and hardship in allowing a long interval, during which creditors would be rushing into court to pounce upon the lands of these debtors before the new provisions should come into effect.

22. I earnestly hope that some such provisions as those I have ventured to urge will be introduced by the Legislature without delay.

23. It may possibly be objected in the first place that the design of the Government will be frustrated by the people themselves. Finding they are unable to raise money on simple bond, they will mortgage their lands more frequently than before. They may do so, but they will not therefore be in a worse position than before; they will be better off, because, instead of having their estates put up to the hammer for a simple debt, the lien will be followed by an only temporary alienation, the ancestral property again returning to the owner.

24. But, it will be added, even the hypothecation of property will fail to answer the owner's purpose of raising money. He will be driven to an absolute and irrevocable sale. Perhaps this may be the result. Perhaps we shall have more direct and voluntary sales than before. But it will be another form of doing that which was formerly brought about by an insidious and deceptive process. It is far better that a man should sell his property with his eyes open than be inveigled into parting with it by a process of false and delusive hopes that the transfer is only temporary. It is against human nature to suppose that the permanent transfer of land will be, in any comparable degree, so frequent where the alienation must be made immediate, absolute, and perpetual, as under the present insidious system. And if a man will barter away his ancestral lands knowingly and with the full consciousness of what he is doing, the law cannot help him further without locking up entirely the right and property in land by a perpetual entail.

25. It may further be objected that these proposals will reduce the value of land as a collateral security in raising money. They will no doubt do so to some extent. But they will still leave a wide enough margin for all purposes of agricultural improvement.

26. An indirect effect of this limitation may result in an essential benefit to the country, by placing a check on the unlimited power at present possessed by landholders of running into debt.

W. MUIR.

APPENDIX A.

Extract of Board's abstract of their address to Government dated 19*th September* 1856, *No.* 1284, *regarding revenue administration for the Rohilcund Division for* 1855-56.

PRESENT:
W. MUIR, Esq., Officiating Member.

THE real cause of the rapid transfer of property under the British Government, as compared with Native Governments, dilated upon by Mr. Edwards, of Budaon, is, that we have created a marketable property in the soil, which did not before exist, and, having left unfettered the discretion of the zemindars in the disposal of their rights, that property, in the ordinary course of human affairs, must, like any other property, frequently change hands. Without interfering to unsettle the whole ground-work of a system which has been more than half a century in undisturbed action, and to arbitrarily limit the freedom of proprietors, and thereby depreciate the value of their property, it would be impossible to arrest the progress of transfer. But there can, in the opinion of the Board, be no question that much injury is done by the indiscriminate and peremptory sale of landed property, whatever be its relative value to the sum decreed. The remedy proposed by Mr. Edwards is that he would insist on a more careful resort to the process of distraint, and would limit the power of sale to the appellate court. The Board do not see that this would much improve the state of things.

The penalty of sale would not follow so promptly on the decree, but it would still be legally claimable by the decree-holder, for it is not apparently proposed by Mr. Edwards to invest the Judge or Sudder Ameen with any discretion to refuse sale. It has occurred to the Board that the evil might be palliated, if, instead of ordering sale of land paying revenue in satisfaction of their decrees, the courts were directed to call upon the Collector to realize the sum decreed by any minor process, involving only temporary extinction of proprietary right; and if this proved impossible, then to report the circumstances before proceeding to sale. Attachment and temporary transfer, or farm, are found effectual for the recovery of arrears of revenue, and there is no reason why they should not, *where the debtor's title is full and perfect,* prove equally efficacious for the recovery of debts. The Board have thought it sufficient to throw out this general suggestion for the remedy of an evil which (although they by no means share in the apprehensions entertained in some quarters as to its extent and dangerous consequences) undoubtedly occasions no small injury and distress; but they do not consider it necessary in an annual report to pursue the proposal into further detail, as it involves an alteration of the existing law (Section 2, Regulation VII. of 1795; Section 9, Regulation III. of 1803; Construction 752, dated 21st December 1832).

Extract of Board's abstract of the orders of Government dated 20th October 1856, *No.* 1979*A*, *regarding revenue administration for the Rohilcund Division for* 1855-56.

The general tenor of the remarks by the Board has the concurrence of the Lieutenant-Governor in regard to the rapid transfer of landed property from the possession of the original proprietors, which is now the subject of almost universal attention and comment among district officers. The Government can do no more, generally, in this matter, however wide and unquestionable its importance, than watch the natural and unrestricted course of the transfer of property, and alleviate its effects from time to time by such measures as may be fairly within the power or influence of the executive administration. A copy of Board's remarks on the practice brought to notice by Mr. Edwards, the Collector of Budaon, of bringing the sale, under the orders of the civil court, of valuable estates, or interests in estates, for the liquidation of decrees of insignificant amount, will be sent to the Court of Sudder Dewanny Adawlut for their remarks, after calling for a full statement of facts from the Judge of Bareilly, who should obtain a complete list of cases for examination from Mr. Edwards, the attention given by whom to a subject which is certainly of grave consequence is highly commendable. Mr. Edwards ought, however, according to the prescribed rules, only to have noted it in his general report, and to have offered the special and detailed statement of his views in a separate address. It is necessary that this practice should be carefully insisted on as regards all general discussions.

Note by Senior Member, *Sudder Board of Revenue, North-Western Provinces, on sales of lands in satisfaction of decrees of court.*

The compulsory sale of landed property in satisfaction of decrees of court has been in the statute since 1793. It is only of late years that the operation of the law has been questioned—it is now the subject of varied reclamation.

2. Until the last revision of settlement, and in the Province of Benares, so much of the operation as involves an accurate definition and registry of rights in land was completed in these Provinces, the purchase of landed property as an investment of capital was hazardous. The purchaser was generally compelled to bring a suit to define his purchase and to obtain possession.

3. The rules of practice for the guidance of the courts formerly allowed, or at least did not prevent, the exercise of large discretion on the part of the Judge who ordered, and the Collector who conducted, the sale, and it is certain that in very many cases accommodation was arranged between creditors and debtors without resort to the last extreme measure.

4. Prior to 1806 great latitude was permitted to, or assumed by, the courts in providing for payment of the due to the judgment-creditor by instalments, and in granting indulgence of time. By Section 10, Regulation II. of 1806, this was restricted; the assent of the creditor, as a general rule, became necessary for such arrangements, but even then the discretion of a short postponement, under particular circumstances, if thought to be just and equitable, was vested in the Judge.

5. Regulation VII. of 1825, though not expressly repealing this provision of the law, by laying down more precise rules respecting attachment and sale in satisfaction of decrees of court, restrained the previously free exercise of the discretion.

6. The rules of the Sudder Court, in their circular order No. 205, dated the 10th June 1842, virtually forbad the excercise of such discretion, by defining the several classes of objections to sale of property, and the mode of dealing with them; but not including in the classification the objection of the debtors, which, whether as appeals *ad misericordiam* or otherwise, had formerly, under the law above quoted, been received by the courts.

7. Still the influence of the Collector naturally, and not unreasonably, exercised to prevent, if possible, the ruin of old and respectable families, could be, and was often brought to avert the calamity. The date of sale could be long deferred, postponements, though irregular, could be effected on one plea or another, and the most rapacious creditors could be induced to relax when the public sense was sure to be on the side of the reluctant auctioneer.

8. Act IV. of 1846 and the rules in the Sudder Court's Notification, 14th December 1846, which, under Section 11, have been the force of law, left no margin of grace or discretion, for sales were ordered to be held monthly. The Collectors could no longer postpone sales, and they were further compelled to give possession.

See a remarkable example in the summary cases, 24th June 1851, Pertaub Sing, petitioner, page 222 of report.

9. The result has been that the conduct of sales has almost universally been made over to the Deputy Collectors, the grasp of creditors has been tightened, and property in land of all property has been the most easily seized in execution, and most summarily and effectively transferred.

10. It is true that provision has been made, or rather has been attempted, to prevent the intrusion of strangers by securing a right of pre-emption to other members of the proprietary community to which the debtor belongs, but it has failed. The judgment-creditor may bid, and he is not required to bring money to deposit the requisite percentage of the amount of his bid; he has the privilege of tendering his decree in lieu of cash.* If other members of the proprietary community show an inclination to purchase, he of course bids to the full

* Circular order 30, 18th January 1839.

amount of his decree and costs, which often exceed the fair market value of the interest sold.

11. The consequence is, that the co-sharers of the debtor prefer the chance of a contest with the creditor, should he purchase, until he is glad to resign his acquisition, or to deal with a class of speculators who are to be found at every Collector's cutcherry, and who buy for a trifle and at a venture, without the smallest intention of taking possession, but with the assurance of some profitable bargain with some or other of the proprietary community.

12. Hence arise fictions of registry, fictions of delivery of possession, and other evils, or where the auction purchaser belongs to another class who buy a part with the object, by intrigue, dissension, and litigation, to grasp the whole estate, the mischiefs of a protracted contest, and patient waiting for revenge. Of this abundant evidence has been furnished in the events of the last year. It was to be expected the compulsory sale and perpetual alienation of land in satisfaction of debts is repugnant to Native ideas. The proprietor sold up has generally his cultivating occupancy, remains on the spot, and retains the assurance that he will recover his hereditary rights at some time or another.

13. The number of private transfers of landed interests in these Provinces, as exhibited by the Collector's registers of mutations, have largely increased of late years, so much so as to have been recently the subject of particular enquiry. There is good reason to believe that many are what are called benamee transactions, and that debtors finding their creditor preparing to sue in court constantly endeavour to escape the process in execution by the fiction of a paper transfer to some relative, friend, or agent beforehand.

14. The manifest objection to the present system is the preference which it gives to that which should be the last extreme measure above other modes of satisfying decrees.

15. The creditor avoids taking out a writ for the imprisonment of his debtor, since he must pay the cost of his keep in the civil jail.

16. He does not apply for distraint of goods and effects, for costs have to be advanced, there must be trouble taken to indicate the property, and the sale ameen must have his commission.

17. Attachment of landed properties is simply impracticable where in so many cases the proprietor of the land is himself the cultivator also, and, where practicable, gives but a slow and uncertain return, since the prior lien of the State's demand of land revenue must be satisfied, and the skill, experience, and influence with the tenantry of any curator can never equal those of the proprietor.

18. The judgment-creditor, therefore, preferably resorts to the process which costs him nothing, and in which every thing is done for him. The court sends his schedule to the Collector, who has to arrange the order of lots for sale, to issue the notifications, to see that they have been duly published, to employ a number of officers at his own cutchery,

or in the interior on the creditor's mission, and in a multitude of cases to find all this expenditure of time, labour, and expense (for the State defrays the cost of the establishment) superfluous, the money being paid; or if the uncongenial task of sale in form has to be done, the unavoidable acceptance of some speculator's bid, which he knows is only the prelude to some covert bargain, or the equally unavoidable acquiescence in a measure which forces the intrusion of a stranger on an angry community.

19. The system is fostered by the Native Judges. It adds to their dignity to have the privilege of sending their precepts to the Collector. The vakeels of their courts are often the nominal or real purchasers. They are saved the trouble of enforcing execution by other modes. The Collectors have large establishments, but they have important and various duties, and the principle of the law which makes this officer ministerial in giving effect to the court's orders relative to division of lands, sales in execution, and adjustment of mesne profits, has, in my opinion, been needlessly and mischievously extended to other processes which the civil courts ought to enforce by their own establishments.

20. The repeal of the law which authorizes the sale of landed property in satisfaction of decrees of court—a measure which some have advocated—is, however, inexpedient and unnecessary. We have in the districts, late of the Saugor Division, ample evidence that the prohibitory rule there has been even more mischievous than the encouragement to the preference of sale in execution to other measures in these Provinces.

21. The agricultural classes, generally improvident and blind to the consequences of debt, are at least in these Provinces under some restraint from the consciousness that the creditor has the power of enforcing his claims to their whole, or at least to a great extent. In the tract of country alluded to, recklessness and dishonesty have no bounds. There is no sense of liability—whatever may be the terms of a loan, they are accepted. The tenure of the land is safe so long as the Government lien is discharged. The creditor cannot oust, and sooner or later is glad to make a compromise. Thus capital is expended on personal gratification. Agricultural enterprize, if it does not recede, does not pass over traditionary bounds. There is no improvement, no progress.

22. All experience, too, is against attempts to bolster up a proprietary of land, which, whether single or a plurality, has become embarrassed beyond redemption, whether by extravagance, or folly, or dissension, or by the unit of the proprietor swelling, under the laws of inheritance, and in progress of time, to the hundreds who will seek no other avocation but land-ownership, till forced to relinquish it.

23. Sale of lands must be sometimes an unavoidable necessity, and of beneficial consequences in giving impulse to agricultural enterprize and improvement.

24. There seems to be no reasonable ground in this respect for making a distinction between the public and the private creditor. But

at present there is, in one sense, a very marked distinction in the North-Western Provinces.

25. The private creditor has every possible encouragement to enforce sale of land preferably to other processes.

26. The public creditor resorts to such sale as an extreme measure when all other modes have failed.

27. It is unnecessary to refer to legislative Acts and Rules of practice to prove this position. Sales of land for arrears of revenue are either the measure of last resort, when other expedients have failed, or as often, if not more so, the preliminary remedy for the over-assessed or disabled estate; the process extinguishes all previous liens, and enables the Government, after a fair test of capabilities, to restore the property purchased by itself to its former owners. In the one case hopeless insolvency and incapacity are set aside for a vigorous management; in the other the former proprietors are placed in a better position than before.

28. Sale, two, of rights and interests in land by the revenue authorities in satisfaction of other public claims, where the measure is authorized by law, is also, under existing rules, the last resort when other legal means of coercion have failed.

29. There is no reason why the same tenderness should not be shown by the civil courts in having resort to a last measure, nor where the necessity is admitted, that some restriction should not be imposed by the Government in the shape of a charge for the employment of its revenue establishments.

30. By the common law of England, I believe, except under the law of bankruptcy, it is not at the discretion of the decree-holder, but of the court, to select the mode of execution; and ordinarily arrest of the person, distraint of goods, and attachment, where practicable and safe, of profits of land, should precede the last measure of sale.

31. The extreme measure might further be obviated by a discretion being vested in the civil courts to make over the lands of the debtor to the creditor for a limited term, not exceeding twelve or fifteen years, on the analogy of the eligit of English law, the ousted proprietor being allowed to retain a reasonable portion of seer land, or a fixed sum from the collections for his subsistence. It is, however, desirable that such arrangements should be ordered by the Judge on reference to the Collector.

32. Where sale is considered unavoidable—and this point should also be determined by the Judge—the creditor should be required to pay into court a fine equal to 10 per cent. of the amount of his decree, inclusive of costs of suits, or of such reduced amount as he may declare himself content to receive in full discharge of his decree. The levy of this fine or fee should not of course be repeated in case of postponement of sale and a subsequent requisition in the same case. It is, as above stated, a reasonable charge on the part of the Government for the employment of its revenue establishments for the benefit of the private

creditor, and with other precautionary measures suggested against too facile an acquiescence in the measure, would undoubtedly operate greatly to reduce the number of sales.

33. It has been suggested that the sale of real property for debt should be limited to decrees in which property has been distinctly hypothecated. It is understood that this opinion has the countenance of experienced judicial officers; but after much enquiry on the subject it is my full conviction that this would not have much, or indeed any, appreciable effect in diminishing the number of sales. It appears to be almost an universal practice, in order to guard against the benamee transfers above alluded to, to insist on distinct hypothecations, and not only so, but to include therein property of much greater value, if fairly estimated, than the consideration paid. The blind unthinking subscription to documents put before them in such cases by the land-owners generally is the difficulty to be overcome. To be in debt excites no emotion; to be parsimonious is a standing reproach; and amongst the land owners of large possessions there are some, if not many, so infatuated as to believe that a certain degree of indebtedness adds to dignity.

34. The only practical remedy or palliative is, as above suggested, checks on the sale process, its limitation to cases of obvious necessity, and a larger discretion to the European officers who preside over the courts.

E. A. READE.

Supplementary Note by Senior Member, Sudder Board of Revenue, North-Western Provinces,—dated Allahabad, the 16th April 1859.

In a Note originally drawn up on progress No. 3567, and subsequently revised, with reference to the point raised, by one of the Judges of the Sudder Court as to the propriety and expediency of sales of land encumbered with mortgage in satisfaction of decrees of court for money, I have reviewed the past history and progressive tendency of laws and rules of practice to multiply cases of sale of land under orders of the civil courts, with its concomitant evils.

2. The prohibition altogether of sales of land in satisfaction of decrees of court in actions for money, which some have proposed, is, I consider, objectionable, and would, in fact, be inoperative unless it was extended to voluntary transfers.

3. Sale of land must in some cases be as necessary (and in its effects will be as beneficial for the progress of improvement) in satisfaction of the claims of the private as well as the public creditor.

4. But as has been shown in the case of the public creditor, not only is sale of land resorted to reluctantly, and as the last process, when all others have failed, but not unfrequently the Government itself becomes the purchaser, with the sole object of testing resources, re-adjusting

its demand on estates disabled by causes beyond the control of the proprietary, and reinstating them in possession on a better footing.

5. It is reasonable and necessary, having regard to the ordinary character and feelings of the land-owning classes in these Provinces, that the civil courts should show, as they formerly did, the same tenderness and reluctance in enforcing the sale process, instead of as at present; in fact, giving it a preference to other processes.

6. The injunction to sell land in satisfaction of decrees of courts should issue from the Judge of the district only.

7. The same authority should have power vested in him to substitute exclusion of the defaulter for a limited term, as is now done for arrears of revenue by transfers in putteedaree estates under Act I. of 1841, the possession and usufruct of the creditor being in satisfaction of his claim.

8. Creditors should no longer have the gratuitous assistance of the revenue establishments in enforcing their natural preference of the sale process, which costs them nothing, and in which everything is done for them. They should be required to pay to Government beforehand a percentage on the amount of their decree and costs, or on such reduced amount as they may agree to accept in full discharge.

9. Under these restrictions sales by order of courts would be brought within reasonable limits.

E. A. READE.

Supplementary Memorandum on the sale of landed property in execution of decrees of the civil court, by W. Muir, *Esq., Junior Member, Sudder Board of Revenue, North-Western Provinces,—dated Allahabad, the* 20*th April* 1859.

Letter of Government No. 1635, dated 20th October 1858.
Letter of Government No. 1, dated 6th April 1859.

The first of these letters, transmitted extract from a despatch of the late Honourable Court of Directors on the sale of lands in execution of civil decrees, with an expression of the Governor General's opinion in favour of restricting such sales to cases in which property had been distinctly hypothecated for the judgment debt.

2. The second letter now forwards a despatch from the Right Honourable the Secretary of State, dated the 25th January last, on the same subject.

3. On the first of these despatches I recorded a Minute so long ago as the 2nd February, which, however, by some mistake of the Board's Office, has not been laid before the Senior Member.

4. I now proceed to add a few remarks with reference to the second despatch since received, and the valuable and elaborate Minute of my colleague, which has just reached me.

5. I continue to hold the opinion expressed in my Minute of the 2nd February that the most simple, and the only effectual and consistent, course to put a stop to the evils so forcibly stated in the 4th paragraph of Lord Stanley's despatch would be to disallow sale altogether as a process in execution of money decrees. I believe a measure of this kind, however indefensible it may appear according to our European notions of political economy, would be in close accordance with the habits and customs of the country, and, as such, would be highly popular. The sole objection (as it appears to me) to the proposal, as stated in the 25th paragraph of my Minute, is not to be put in competition with advantages to be expected from it.

6. But this proposal was fully discussed in the Legislative Council on the 5th ultimo, both in Committee on the Civil Procedure Bill and in the Debate which followed upon the Honourable Mr. Rickett's motion, and has been decisively negatived. I need not, therefore, further dwell upon it.

7. Holding the above views, I am, as a necessary consequence, in favour of any restrictions that may be proposed on the practice of sale.

8. I would support the system, approved by the Governor General and recommended by the Sudder Court, of excluding the process of sale of real property from the execution of decrees for simple and unsecured debt. This remedy would, however, be only partial, for, as noticed in paragraph 23 of my former Note, it would inevitably lead to a large increase of mortgages.

9. In any case I thoroughly approve of my colleague's proposal for making sale a process to be resorted to only after all other means of realization have been tried in vain. This is in accordance with paragraph 11 of my first Minute; and is indeed the same proposition as that which I ventured to suggest to the Government in 1856.*

* See extract of Board's address, dated 19th September 1856, attached to the former Note.

10. The new Procedure Act makes some provisions towards this object, but they do not go far enough, and are neutralized by conditions.

11. Section 243 authorizes the court to postpone sale where the judgment-debtor can satisfy the court that he is able to raise the amount of his debt by a private arrangement of mortgage, lease, or partial sale of his property. This is so far good.

12. Section 244 is a still further improvement, as it gives the Collector power to stay any objectionable sale, and represent to the court that the debt may be realized by other means, and it gives the court power to authorize such course. But Mr. Currie's amendment in

proposing this section has, to a great extent, been neutralized by the provision that "security for the amount of the decree or for the value of such land or share" shall first be lodged by the judgment-debtor. A judgment-debtor, with a compulsory sale of his ancestral property impending, is little likely to be in a position to produce substantial security for the amount of his debts or the full value of his property. At any rate the Legislature might have left it optional with the court to demand such security when the judgment-creditor could show reasonable ground of risk. The contingency of a public sale for arrears of revenue urged by Mr. Harington is too remote to require an obligatory rule of this nature. In many districts such sales have been for years unknown.

13. I will now offer a few remarks in reference to my colleague's interesting Minute.

14. I quite agree that it is inexpedient to give the Native and subordinate courts the power of directing sale by precept to the Collector, and with reference to the suggestion in paragraph 7 of the Secretary of State's despatch, I think it advisable that all such precepts should be issued by the Judge. I do not however see that any distinction can justly be drawn from the amount of the debt. Transactions of a small amount are of as vital importance to the poorer classes as those of larger amount to the higher; and the former are entitled to the same consideration in the procedure established for their adjustment.

15. The speculations and chicanery of the people who hang about the Collector's auction hall have been well explained by Mr. Reade. Act IV. of 1846 may have stimulated and increased these by reducing the action of the revenue officers more than ever to a mere mechanical process. But the evils complained of were strongly felt long prior to that Act; they were productive of so much trickery and fraud in the Futtehpoor District, that a special enquiry was made on the subject by order of Government in 1844 or 1845. These evils will not be checked by the proposed arrangements. The inchoate or collateral "right and interests", however uncertain and obscure, will still be liable to sale at the demand of the judgment-creditor. "Any right or interest in land" may be sold under Section 249 of the new Act. The power of the Collector to interfere and arrange for the debt by mortgage, transfer, lease, attachment or otherwise, will be practically exercised only where there is a full and sole title, and where the debtor is in possession. In cases of undefined and collateral rights the sale process must, even under the proposed system, take its course.

16. In the late rules introduced in the Punjab, I understand that a distinction is drawn between ancestral and lately acquired property. In principle this is quite correct. We can have no object in giving a new security to titles gained by purchase under the present system, or to exempt from liability to sale a property that may itself have been acquired at auction. But it would be difficult to provide legislatively for

this distinction. In the rules of practice for giving effect to Section 244 of Act VIII. of 1859, it might be enjoined on Collectors to interfere as a rule simply in cases of ancestral property, and to take up other cases only under exceptional circumstances of hardship.

17. Before concluding, I would remark that I do not think the Saugor and Nerbudda territories a fair ground of argument, as it has been assumed by my colleague, against the abolition of the sale process. No proprietary rights exist in the soil there, or rather the Government has till lately refused to recognize such. The ensuing settlement is to be on a proprietary basis. But hitherto there has been no recognition of such a right. It is not to be wondered at that the country should not have advanced under a code which thus ignored the possibility of any secure title. We need not look to absence of the sale law as the cause of depreciation under such a system.

18. My colleague thinks that compulsory sales are sometimes "of beneficial consequences in giving enterprize to agricultural enterprize and improvement". I fear that such instances are rare and exceptional. The ordinary purchasers—bunnyas and money-lenders—are non-resident, and quite uninfluential. Under Mr. Thomason's exposition of the law the auction purchaser* has indeed the power of ousting the proprietor whose rights he has purchased; but we seldom find him with either the inclination or the means to enter on the agricultural occupation of his purchase; and even with these it is not often that he dare attempt to oust the old proprietors. The continuance of the ex-proprietor in the possession of his lands is, in fact, the rule instead of the exception, as is evident from the passages quoted in the margin.† The practical result of the sale, then, in nine cases out of ten, is to transfer the agricultural occupancy of the land from a person whose proprietary title in it gives him the highest incentive to labour for its improvement, to the same person without any proprietary title and interest in adding to the value or productive powers of his once ancestral acres; in short, from an interested proprietor to a mere tenant-at-will. Such a change is not likely to develop the resources of the country.

W. MUIR.

* Directions to Settlement Officers, paragraph 133.

† *Extract from Mr. Reade's Minute.*—"The compulsory sale and perpetual alienation of land in satisfaction of debts is repugnant to Native ideas; the proprietor sold up has generally his cultivating occupancy, remains in the spot, &c."

Extract paragraph 5 of Lord Stanley's despatch.—"The fact that the ousted proprietor almost invariably settles down as a tenant upon the estate which a little before was his own, and thus keeps alive the hostile feelings of the tenants against the person whom he regards as the invader of his property; and the consideration that nothing is so calculated to impair the loyalty and good will of the great and influential proprietary body of India as the direct and constant action of Government institutions in depriving them of their ancient possessions, all combine to make the case one of an exceptional character, and to press upon the Government the consideration of remedial measures, which, under a different state of things, might not have been called for."

From C. B. Thornhill, *Esq., Officiating Commissioner, 4th Division, dated Allahabad, the 14th April* 1859.

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2. In my letter No. 5 of the 4th January last, on the new Code of Civil Procedure, I have already stated my conviction that the existing practice of allowing the civil courts to compel the sale of land in satisfaction of their own decrees has been productive of much evil, and should be prohibited.

3. The reckless improvidence which characterizes most classes of landed proprietors in these Provinces is fostered by the facilities for obtaining loans upon mortgage of their estates.

4. The bunnyas and mahajuns, by whom the money is lent, know that there is no risk whatever in the transaction; they can sue out a decree, and obtain an order for the sale of the land in execution, whenever they please; the investment, therefore, is so safe and profitable that they are always most ready to press advances upon the zemindars.

5. It is perfectly true that the extravagant expenditure of the landed proprietor is the cause of his estate being brought to the hammer; but this extravagance is encouraged by the money-lender, because he feels secure of the aid of the civil court in recovering his advances.

6. It has been objected by those who are opposed to any alteration in the law that it would be unsound policy in the Government to interfere in private transactions of this nature; that the man who incurs debt is perfectly well aware of the consequences which its non-payment will entail, and that he is the best judge of his own affairs.

7. This argument, however sound in reference to European races, does not apply equally in regard to Asiatics, more especially to those of this country.

8. As a body, the proprietors of land in these Provinces are deficient in foresight; they live for the time being only; and if they are able to gratify present wishes, and provide for passing wants, they are content to leave the future to the chapter of accidents.

9. The great source of indebtedness is the lavish prodigality with which money is thrown away upon occasions of domestic ceremonies and festivities, more especially in marriages.

10. If this national failing could be corrected (as possibly it might be to some extent by the imposition of a tax on all expenditure of this kind, exceeding a certain fixed and moderate limit), one great origin of the evil would be done away with.

11. It is easier to check the indulgence of a pernicious habit than to induce a change in the state of feeling which produces that habit.

12. Experience has proved that the transfer of landed property to the class of men who become purchasers under the operation of our civil courts injuriously affects both the Government and the people.

13. We may be unable to eradicate the habit of lavish and improvident expenditure which causes the land-owner's ruin, but we can throw difficulties in the way of procuring money for his extravagance.

14. When the money-lender knows that he can no longer sell up his debtor's estate, he will lend with greater caution, and will proportion his loans to the borrower's circumstances and prospects of repayment. The most obvious way of checking the evil seems, therefore, to withdraw from the money-lender that aid which he has hitherto received from the Government. The land-owner who lives beyond his means will then be compelled to raise the money he requires by the voluntary preliminary sale of his property, and this alternative will doubtless induce many to abstain from an extravagance in which they would have indulged, had it been possible to procure the means of doing so, without submitting to so great a previous sacrifice.

15. The recent Act for simplifying the procedure of the civil court provides in Section 244 for the temporary alienation of land in lieu of sale in satisfaction of a decree in cases when the latter measure may be reported by the Collector to be objectionable; but this discretionary power is vested still in the civil court, and compliance with the Collector's recommendation is made contingent on the deposit of sufficient security for the amount of the decree. This last proviso appears to neutralize the benefit of the enactment, since a defendant who could furnish security would ordinarily be in a position to preserve his estate from sale.

16. The disinclination which exists in the Punjab Provinces to the sale of landed property in satisfaction of decrees of the civil court does not appear to have been productive of any inconvenience; and the experience which has been there gained renders the extension of the measure, which it is believed might be introduced with so much advantage into the North-Western Provinces, no crude experiment, but merely the application of a principle of acknowledged soundness.

17. The introduction of this measure would render it unnecessary to adapt any steps for limiting the powers now exercised by Moonsiffs.

From A. H. COCKS, *Esq., Officiating Commissioner of the Jubbulpore Division, dated Jubbulpore, the 29th April* 1859.

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3. During the past rebellion there can be no doubt, as a rule, all purchasers by auction of landed estates collapsed, as it were, without a struggle, gave over their titles to the former owners, and in no instance (that I am aware of) did they make a fight for what we call their rights. They sat down, wept, and prayed for a return of our power; but neither assisted us with followers, nor even with information.

4. They were despised and hated by the old owners as well as by the tenants and cultivators. These commercial speculators in land are

notorious for being harsher landlords, and more addicted to rack-renting than the hereditary proprietors.

5. The talookdars or large proprietors as a body behaved towards us as they considered we had behaved to them, or, at any rate, as it happened they had anything to gain or lose. Being almost universally residents in their former villages, they retained their hereditary influence, and were frequently able to raise the country for plunder, insurrection, or murder, or, on the other hand, they preserved the peace on their estates, and either remained neutral, or assisted the Government by encouraging their followers to take service amongst our new levies.

6. During the height of the rebellion, and previous to the fall of Delhi, I was out in Allygurh, and much indebted to Rajah Teekum Sing, of Moorsam, for aid of various kinds; in fact, had he gone against us, we could scarcely have held our own. This well tried ally is always, but especially in those days, out spoken, and in reply to my questions as to causes for discontent on the part of the people, he repudiated all the usual popular cries, such as our desire to proselytize, &c., but constantly affirmed that we had no right either to sequestrate or sell landed property, except for arrears of Government revenue: and this sentiment, to the best of my belief, is almost universal.

7. There is doubtless considerable difficulty in affording strict justice to creditors, and at the same time preserving the social position of such improvident and reckless *persons* as are the majority of the Native landed gentry.

8. Some officer writing on this subject says—"The object is to prevent, if possible, the necessity of an encumbered estate commission by paternal interference on the part of Government". And another—"Would not allow the action for the recovery of debt to exist at all".

9. I do not see how this last theory is to be carried out, but every thing possible ought to be done to retain land in the possession of its ancestral owner.

10. The following principles might, in some degree, be the foundation for a reformed system.

11. In an agricultural brotherhood no individual should be allowed to alienate his share in the common property without the concurrence of the whole community.

12. In the case of a zemindar or talookdar he should be obliged to obtain that of his next two heirs.

13. Again I would, as is the case in these territories, take from the civil courts all power to sell rights in land or to investigate cases connected with land.

14. Such cases might, with much benefit to the country, be left to the district courts, with an appeal to the Commissioner, and he should be instructed to urge on the district officers to do everything in their power by paternal interference, by direct management, and, if necessary,

by making over the estates to next heir, to prevent their alienation to strangers and speculators.

15. The Moonsiffs should be authorized to try all suits for personal property, but when a debtor is a landed proprietor, and the full amount of debt cannot be realized from the sale of personal property, he should refer the case for the consideration of the European Judge, who might attach the debtor's landed property through the revenue courts. By real property should be understood actual landed estates and its component parts, such as wells, gardens, &c., not mere houses or in gardens the possession of individuals unconnected with the proprietors of a village.

16. Lord Stanley's despatch treats upon the subject of curtailing the powers of Moonsiffs with regard to the enforcement of their decrees. I would retain their powers in this respect as at present, with the exception of decrees for landed property, as noticed above. If all executions of decrees were made through the Judge, it would necessitate an increase of European agency.

17. No country which does not possess a large respectable class, in fact an aristocracy, whether of wealth, talent, or old standing, can hope to withstand the constant endeavours of the ignorant, the foolish, and the desperate, to rise on the ashes of their superiors; again, we cannot at once drive a cart through the ancient predilections of a people—there is undoubtedly in India a deeply rooted reverence for their hereditary Chiefs and a supreme contempt for commercial interlopers.

18. It is for us to turn this principle to the advantage of our rule, and by so doing secure peace and happiness to the people.

From Major F. W. PINKNEY, *Commissioner of the Jhansie Division, dated Jhansie, the 26th April* 1859.

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2. I do not see that the desired object would be gained by limiting, as proposed, the powers of the subordinate civil courts, for if the sale of landed property or rights in landed property was barred for those inferior courts, there would still be some higher court where such sale could be enforced, and to that court decree-holders would apply, and the end would be the same as it is now, namely, sale and ousting of old proprietors.

3. It appears to me that the gradual displacement of old proprietors by new men cannot be remedied. From the sub-division of shares, occasional bad seasons, great extravagance, and reckless borrowing at any rate of interest, to get over present pressing necessities, without thought of future repayment, very many old landlords and proprietary brotherhoods are, year by year, becoming more impoverished, and they at length become ruined and bankrupt, and, like broken down landed proprietors in all other countries, must make way for new men. It must be remembered, too, that the establishment of our Government

has deprived the members of village communities of many sources of gain and livelihood formerly open to them, such as service in the armies of Native Chiefs, or as their personal military attendants, &c.; where our Government is established this is at an end, and the village lands are the sole support of all.

4. My experience in civil employ has been confined to the Saugor and Nerbudda Territories and to Bundlecund, which, however, are extensive tracts, and from what I have seen there, I do not think it generally possible, and certainly not desirable, to prevent the transfers of villages from impoverished landlords or communities to wealthy men, be they bankers or any other class. From sub-division of shares and debt the proprietors are unable to lay out money on the improvement of the village, each gets what he can out of his share of the land with the least possible outlay, the village gradually deteriorates, and, unless taken from the possession of a community of paupers, is ultimately ruined.

5. From the general want of faith amongst Natives with respect to money transactions, and from the want of credit and resources in ousted proprietors, I think few auction purchasers will be found willing to relinquish their purchases in favour of ejected proprietors.

From F. WILLIAMS, *Esq., Commissioner, 1st Division, dated the 12th May* 1859.

I HAVE the honour to submit my opinion on the subject of sales of landed property in execution of decrees of civil courts.

2. I am afraid there is little hope of the district officers being able to induce auction purchasers of such property to relinquish their purchases in favour of the old proprietors, or to come to any terms with them, as is suggested in the despatch of the Right Honourable Secretary of State for India, and in that of the Honourable the Court of Directors.

3. The monied class to which auction purchasers belong have already shown that the fear of retribution is overcome by a stronger feeling, the determination to realize their money or their money's worth, and more if possible. The execution of decrees is being sued out as unhesitatingly as before the disturbances, and I do not think that in this division a case will be found in which compromise of any sort can be effected.

4. I fear that the restriction of the powers of Moonsiffs will only meet the cases of small proprietors. The transfer of large estates is generally the result of proceedings in higher courts, and under the present system the favourite mode of executing such decrees in all courts is by sale.

5. I venture to annex extracts from notes for my annual inspection report, in which I have suggested that the practice may be checked.

6. But I believe that to reach the root of the evil, which is the natural extravagance of the people, encouraged by the facility with which they can raise money on the security of landed property, more stringent measures must be taken.

7. I believe, if the opinions of landholders could be obtained, a vast majority in the North-Western Provinces would vote for the entire prohibition of the transfer or sale of landed property by decrees of courts.

8. I do not think the prohibition would have any other effect than the desirable one of preventing unnecessary and foolish extravagance. Money is hardly ever borrowed to pay the Government revenue or to improve estates; Native landholders do not expend capital on improvements. Money borrowed is, no doubt, in many cases paid in on account of arrears of revenue, but it is because the income has been devoted to the unreasonable expense of a marriage, or made away with to stop some pressing creditor.

9. If there are even estates which do not pay the revenue, they are exceptional cases, and in such cases the proper remedy should be applied.

10. The practice of transferring and selling has gradually grown up within the last half century.

11. There have been in every district in the North-West zemindars without the power of transfer, and safe from the civil courts, till within the last few years. I mean the cases in which there were no recorded proprietors, called khaneh khalee estates, of which Government was held to be the proprietor.

12. Among these there were exceptions caused by over-assessment, but generally the same families had been headmen and managers from generation to generation, paying the Government revenue punctually, and keeping the estates in good order. They were almost universally nearly free from debt and well off, or if they did owe money, it was only a small sum that could be adjusted out of one year's assets, and was advanced on this assurance and the security merely of the good faith of the debtor.

13. It must be borne in mind that on completion of the new settlement, which is commencing in many districts, the money-lenders will be still more eager to advance on the security of landed property. When the rule of assessment is that Government is only to take half the assets instead of two-thirds, this mode of investing capital will have higher attractions than ever, and a great increase of the alienation of old property may be looked for if extravagance is not checked.

I have suggested above and in the appendix the only measures for meeting the evil now loudly complained of that occurs to me; that suggested in the appendix has already, I am glad to say, been acted upon by one of the civil courts in the division, and one loyal family has so far been saved from ruin, which had all but fallen in it.

Extract from Circuit Notes by Commissioner, 1st Division.

THE narrative of events during the mutiny shows how instantaneously in every district the people proceeded to nullify, as far as they possibly could, all orders and decrees of the civil courts. The remarks on each district in this report show to what an extent with this view they destroyed the records.

The intense feeling of dissatisfaction with which the courts are regarded by the mass of the people has long been well known; the evil influence the proceedings of these courts have had on events during the late disturbances has become patent to all. But the amount of utter ruin which has been, and is being, inflicted on old families before the mutinies, gradually, but since the restoration of order, with crushing rapidity, has been brought to my notice so prominently, and with such earnest entreaties, that some steps might be taken, that Government might be moved to interfere, and to save the sufferers, that I think it right to mention some particulars, in order that, if possible, the remedy I suggest may be, if approved of, adopted.

The parties who have applied to me have taken the Government side and behaved loyally and well during the disturbances. In one case, as a reward for such conduct, Government has granted an advance of the sum required to satisfy the most pressing creditors. I cannot recommend for such liberal consideration the legion of cases in which hopes of similar aid have been and would be raised on slighter foundations; but I should be neglecting an important part of my duty—a much more important part than that of examining numerous and voluminous registers—if I did not draw attention to what is going on, and endeavour to prevent well-wishers and supporters of our rule from sinking into the vortex which has lately whirled thousands into rebellion.

I believe that a Special Commissioner, such as was appointed for the re-consideration of cases of sales for arrears of revenue in former days, would find ample ground for a similar exercise of the remedial power of Government where, owing to laws of our own creation, large estates have passed from old families into the hands of usurers and speculators for most inadequate prices, after the receipt by the creditors of sums covering the principal of the debt and compound interest, at rates double and treble the limit fixed by law, far exceeding the original sum borrowed.

But the general destruction of public records and private documents most probably precludes all chance of doing full justice to all parties in such cases, even if it could be thought politic now to attempt this. Though any general revision of past cases may be impossible and inexpedient, I believe further evil may be somewhat checked.

A brief description of one or two cases will suffice to elucidate what has been written above, and to introduce the remedy I would suggest.

In one case, after an adjustment of old accounts against the family, about Rs. 8,500 were allowed to be due; what portion of this was principal and what interest is not stated. The estates were mortgaged for this sum. Eventually decrees issued for about Rs. 12,000, and landed property stated by the owner to be worth Rs. 61,000,* yielding an annual profit of above Rs. 3,500, which would, at the average value of property, be worth at least Rs. 30,000, was sold for Rs. 12,056.

* I mention the owner's valuation only to show what he feels.

Dwelling houses valued by the owner at Rs. 19,000 were sold for Rs. 1,310, and a large old fort valued by the owner at Rs. 50,000, the real value of which it is impossible to estimate, but in which there are lakhs and lakhs of bricks, was sold for less than Rs. 1,000, that is to say, property certainly worth at least Rs. 50,000 has been sold for about Rs. 14,000 on account of a debt which originally was not much more than half the last sum.

In the other case it is not clear what the original debt was, but it would appear not to have been above Rs. 12,000, of which about Rs. 6,000 had been paid.

Estates and gardens valued by the owner at Rs. 48,000 have been sold for about Rs. 17,000, and house property has been sold for a little under Rs. 3,000.

I myself saw the family residence which had just been sold for about Rs. 1,300, and from which the victims of the civil courts were about to be ejected.* It consisted of many separate houses, the main one really a fine handsome house such as is seldom seen in the Upper Provinces, in small towns; and I have not the slightest hesitation in saying that the materials alone, the bricks and wood, must have cost as many thousand Rupees as the entire premises fetched hundreds.

* I have since heard that the sale of these premises had been cancelled since my visit.

It was allowed by competent Native Judges of such matters that Rs. 20 or 25,000 would have been realized for such premises in the principal town of the district.

In this last case property fairly worth at least Rs. 35,000 had been sold for about Rs. 20,000 on account of a debt which perhaps originally did not exceed half the last sum; and claims to the amount of Rs. 6 or 7,000 are still hanging over the unfortunate family.

It may be argued that the value of the property is what it will fetch in the market, but this is not the case; when there are few capitalists, they do not bid against each other, and it certainly is not the case now. The price of all property has deteriorated much since the disturbances at least in the part of the country referred to, and from these combined causes property sells for most inadequate prices. Hardly any but the creditors bid, and they of course as little as possible;

and before long the owners of valuable estates will have become houseless paupers if the present mode of executing decrees is continued.

Now in such cases it appears to me that, instead of sacrificing the property of the debtors, and turning them out of house and home, the whole of the claims might have been liquidated out of the annual income of the estates under the management of an officer appointed by the court in a very reasonable time; that there is no legal objection to such a course, for Judges are allowed to sanction provision for the adjustment of decrees by instalments; and that there would be no difficulty in persuading the decree-holder to consent to an arrangement which would ensure the satisfaction of their claims within a definite period, if decree-holders and civil courts could be divested of the idea that there is only one process for the execution of decrees—sale.

This is not mere theory; there would hardly have been a more hopeless case than the Rajah of Kasheepoor, in Rohilcund. His debts, aggregating about a lakh of Rupees, were compromised for Rs. 50,000 which were advanced to him by the Nawab of Rampoor, the creditors readily accepting half their demand. The Rajah's estates, then yielding less than Rs. 20,000 gross annual income, were put under the charge of the Collectors of the districts in which they were situated, and in about seven years the advance was repaid, and the property, then yielding nearly Rs. 30,000, was re-leased to the Rajah, who had been taught economy by living in the meantime on an allowance of Rs. 700 a month assigned to him out of the income of the estate thus saved to him.

Of course all embarrassed estates could not be taken charge of by Collectors, and in ordinary cases such advances would not be forthcoming. But in the cases I have brought forward, by attaching the estates and appointing an ameen to manage them, and pay the assets into court for distribution to the creditors, the claims would have been paid off in five or six years in full probably, which is about the time perhaps that would be occupied by the courts in fully disposing of the decrees that is utterly ruining the debtors, who would, under the system I suggest, receive back their property entire and unencumbered, wiser and better men, from having been obliged to economize, and having been saved from the demoralizing chicanery of a civil court, and certainly better subjects, and more likely to maintain good feeling towards Government among their old tenants and friends, who sympathize with them and us when they retain influence.

A circular order from the Sudder Court, impressing on all officers charged with the execution of decrees in the civil courts, where such landed property is affected, that where by the attachment of the property and application of the annual income to the liquidation of the demands there is a reasonable prospect of satisfying all claims in a moderate period, it is not necessary or desirable to authorize the extreme measure of sale, the mere indication perhaps that there is another mode of proceeding, if such an order could be issued, would do much to check a great evil.

From G. F. HARVEY, *Esquire, Commissioner, Agra Division, dated the 17th May* 1859.

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3. I am very certain that the subject is one which calls for remedial legislative action, and that it will be possible to provide a remedy, which, without disturbing any existing and acknowledged rights, shall operate beneficially in the future.

4. As a preliminary, I would restrict the powers of the lower courts (Moonsiffs) to the trial of simple contract debts, and generally suits for money, or other purely personal property.

5. The whole matter, however, turns upon the execution of decrees, and the liability of ancestral landed estate to sale in satisfaction of an award on a bunnya's balance of account, a simple contract debt, or any other mere money liability. I entertain the opinion that in strictness of local law and equity and traditional usage among Hindoos, and even in ancestral Mahomedan estates, all that can be made liable in satisfaction of such debts amounts to the *usufruct, i. e.*, the gains or profits derivable by each hereditary holder in possession, or each co-parcener in a joint undivided brotherhood, during their lives, from the produce of the land, which is virtually accounted to be strictly, morally, and securely entailed, so far as any power in the actual occupant exists to transfer it, even for the benefit of a lineal prospective successor; and the decree only of a civil court has been allowed arbitrarily to invest a debtor with new powers, unadmitted by himself, over property, for the purpose of ruining him and impoverishing his heirs and descendants.

6. I am unable at this moment to give the careful reflection and consideration to the question which it deserves; but I apprehend that it should not be difficult to legislate for the appointment of *receivers*, or trustees of *usufruct*, for the benefit of creditors, and in liquidation of decreed debts; nor do I doubt that the share of profits thus held in satisfaction of decrees may be collected and brought to account in the same mode as any other demand upon the same land—the amount of income due to the *debtor*, after expenses of cultivation and discharge of Government revenue, and also after an agreed allowance for his maintenance, if not incarcerated, are all simple details which may be easily provided for in each case, especially if those most interested in preventing the admission of a stranger and preserving the rights of cognate progeny are, whenever practicable, nominated to exercise the office of receivers, their trust to cease with the life of the debtor, or the satisfaction of the debt decreed.

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From J. H. BATTEN, *Esquire, Officiating Commissioner of Rohilcund, dated Bareilly, the 26th May* 1859.

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2. The whole subject is fraught with such great difficulties that I must confess to a consciousness of inability to *discuss* it with any benefit to those authorities on whom will fall the duty of *deciding* it.

3. I cannot help thinking that the evil, in a political point of view, of the transfer of landed property by the operation of our civil courts from its hereditary owners to the commercial or money-lending community has been somewhat exaggerated. Gentlemen of a *doctrinaire* turn of mind, who have been searching for causes to account for the want of sympathy with our Government shown by the heads of the agricultural classes, have been glad to hit upon this blot; but it may be fairly doubted whether, if all the old families had been left in possession of their estates, we should have found the majority actively enlisted on our side. It was certainly not the operation of our civil courts which enlisted the nobility and gentry of Oudh on the opposite side.

4. Be that as it may, I am ready to concur in the general statement recorded by Lord Stanley in the 2nd paragraph of his despatch, while with his Lordship I would at the same time deprecate any attempt to impeach rights and invalidate titles founded by our own laws, merely on the ground of their unpopularity or inexpediency.

3. In regard to the *past,* I am far, too, from thinking it a hopeless task for the Collectors of districts to act on the suggestion contained in the 4th paragraph of the despatch, and to attempt amicable arrangements, by which timid auction-purchasers may get rid of their uncomfortable property, and by which its re-transfer to the old hands may be effected.

6. The real difficulty lies in the *future.* It cannot be concealed that the suggested remedies all involve class legislation, which is theoretically objectionable. They also involve a confession that the popular voice is stronger than the law, which is a real evil; and *thirdly,* they involve the anomaly of declaring that what is the highest wisdom in Ireland (a country in many respects resembling India in regard to attachment to soil, hereditary prejudices, &c.) is the highest folly in India. My respected lecturer, Professor Longfield, the Judge of the Encumbered Estates Court in Ireland, would, I fancy, hardly forgive me if I were to lay down the proposition that the greatest benefits have accrued in that country from getting rid of an impoverished and embarrassed squirearchy, and by substituting in their place capitalists in the shape of Dublin lawyers and Belfast merchants; but that in British India the great and healing measure is to proclaim the Hindoo Mitakshara; to create entails in the families of broken-down debtors, whose merits consist solely in their "blue blood"; and to expel from the soil all wealthy parvenus infected with the stain of trade.

7. Nevertheless, having allowed, according to the Secretary of State's 2nd paragraph, that in India the unpopularity of this latter class, and their inability to protect themselves or help Government, is an evil, I suppose my political economy must bend before the force of local natural circumstances, and I must give a vote in favour of *some* remedy.

8. While the law remains as it is, no advantage can be gained by cancelling the power of the Native Judges to sell land in execution of

their decrees for debt, and by transferring such cases to the file of the English Judge. I very much doubt whether with the increase of that file the Judge (or his Sheristadar) would pass as good or as careful orders as the Moonsiff.

9. As far as I can judge, too, the increase in the number of auction sales has been owing, not to the power given to the Native Judges to sell land, but the improved practice of the civil courts in the matter of the trial of suits. The system of periodical statements; the necessity enforced on all the Judges of accounting for even one day's abnormal delay; the *vultus instantis tyranni* of the "Sudder"; all these are sufficient to account for the number of sales, which of course bear their proportion to the number of suits instituted and decided.

10. Without a change in the law, which makes the real property of a debtor ultimately liable for the payment of his debts, all that would be gained by the restriction of the powers of the Native Judges would be *delay*, and hitherto *that* has been considered an *opprobrium* of the civil courts, and not a praise.

11. Being, however, called upon for my vote in this matter, I must vote for that delay in processes of execution against real property (*i. e.*, against land)—proposing that some law be passed restricting the sale of hereditarily held land in satisfaction of decrees for simple debt to the court of the European Judge; prohibiting the sale of such land on such decrees in cases below Rs. 300; and in cases above that amount, compelling the Judge to refer the matter for an attempt at adjustment by the debtor, his family, and his co-parceners to the Collector* of the district; and also compelling the civil court to accept duly executed bonds of instalment, secured (when money securities are not forthcoming) by the rent or produce of the land remaining after the satisfaction of the claim of Government for revenue.

* Section 244, Chapter IV., Act VIII. of 1859 (or new code), gives an opening to the Collector in this matter, which opening can be widened in any new enactment.

12. In conclusion, I may record my firm conviction that the new law for the limitation of suits will have a highly beneficial effect on the whole *status* of the lending and borrowing community; and my decided preference for reforms of that kind, and of the kind effected by the new Code of Civil Procedure, the new law for the recovery of land rent, and the like, to any changes that can be effected by class-protecting legislation.

From F. B. GUBBINS, *Esq., Commissioner, 5th Division, dated Benares, 1st June* 1859.

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2. * * The question mooted is so very difficult a one that it required a mature consideration of the subject before I could venture upon offering an opinion.

3. The gradual dispossession of a brave and high caste agricultural race that has held the land for a period varying from five to thirty centuries, and its re-placement by the cowardly mercantile bunnya race, has always struck me as one of the worst features of the British rule in India.

4. The transfers that thus take place are, "as every one knows, occasioned by one of three causes—the *first* of which is sale for arrears of land revenue; the *second*, sales under decree of court; and the *third*, private transfer".

5. To begin with "sales for arrears of land revenue". The only remedy that I can propose for the evil is that sales that take place under this head should not affect the property sold for a longer period than twenty years. I am of opinion that with a fair assessment the power to alienate all proprietary right in the soil for a period amounting to nearly an entire generation will prove amply sufficient to secure the rights of the State.

2nd—"Sales effected under decree of court."

Several different minor headings group themselves under this general one :

I. Sales under decrees, which decrees in themselves do not effect the property in the soil.

In these cases I would recommend that only the rights and interests of the person against whom the decree is given be alienated, and that the rights of the judgment-debtor's heirs be in no way affected by the sale. That on the death of the judgment-debtor his heirs enter into possession of the soil free from all liabilities on account of the debt on account of which the decree in question was given.

II. *Mortgages.*—I should allow the act of the mortgager to affect only his life-interest in the soil, and any decrees given under this head should only alienate the rights of the person who executed the mortgage deed. Should the mortgage deed have been executed by the present incumbent and by his sons, I would allow the grandsons to step in and claim their right of succession, and I would make any alienation extending beyond two generations null and void. I would make all instruments that had not been registered within three months of their execution totally invalid.

III. *Decrees founded on deeds of gift or sale.*—I would adhere to the general principles laid down by me under the head of "Mortgages". Every unregistered instrument should be rejected by courts of law. The present incumbent should only be allowed to alienate his own life-interests, and in cases where the incumbent's direct heirs had joined in executing the instruments, I should allow the third generation to claim their right of succession, no alienation being valid beyond two generations.

3rd.—"Private voluntary transfers."

I would under this heading be guided by the general principles laid down under "mortgages" and "decrees founded on deeds of gift

or sale". I should require all instruments to be registered, and I should prevent alienation beyond two generations, allowing only the life-interests of the persons executing the deeds to be alienated.

6. I would, in explanation of the views that I have recorded in the foregoing remarks, venture to record the following observations. The causes that lead to the ruin of the agriculturists in this country, be he a large or small proprietor, are—(1) reckless extravagance; and (2) forgery and the chicanery of our law courts.

7. Under the head of extravagance I would enter as the chief and first item the waste that occurs on the recurrence of each marriage festival. But there is besides this a gradual extension of that pernicious system which is poisoning the roots of all classes of society in Europe, viz., the desire to live beyond one's income. This feeling is stated by persons whom I have consulted on the subject to be one of very late growth, and would seem to be consequent on the republican ideas that have been introduced under British rule.

8. Looking upon the agriculturist of India as little better than a savage, I would put him into partial leading strings, and I would prevent his entirely alienating his own landed property, which he will most undoubtedly insist on doing, unless prevented by law.

9. To effect this I have only laid down some crude general principles, but were they to form the basis of any enactment, modifications would doubtless in some instances have to be made, so as to permit, under peculiar circumstances, of perpetual alienation being effected.

10. To prevent, as much as possible, the second bane (*i. e.*, forgery) under which the agriculturist suffers, I would make it imperative that every instrument in any way affecting the proprietary right in the soil be registered within three months of its execution, and that it be in default of such registry regarded as so much waste paper.

11. As regards the limitation of the powers of the lower civil courts, alluded to in the concluding portion of Mr. Bayley's letter now under reply, and in the 7th paragraph of the Home despatch, I beg to submit that these powers do not appear to me to affect the merits of the case. What is wanted is that the old proprietary body should not be dispossessed, and this the Moonsiffs' decree does not do. It is the *sale in execution* of decree that requires to be checked, for the judgment-debtor's landed property being all registered in our revenue records, it is more easily seized than any other description of property.

12. The Moonsiffs' decrees seldom admit a stranger within the circle of the village co-parcenary body. Their jurisdiction is so limited that very few cases involving proprietary right in the soil come before them, and those are mostly suits pending between the various members of the village community.

From A. O. HUME, *Esq., Collector of Etawah, dated Etawah, the* 11*th April* 1859.

* * Compromises of the nature alluded to are by no means uncommon amongst the Natives themselves. It is not at all unusual for auction purchasers to re-sell at a slight advance to the original proprietors lands that they had bought, *intending* to keep, while very often auction purchasers have *no* sort of intention of holding the land, but only buy to re-sell immediately, if possible, to the old proprietors who will pay highest; or if these have not the where-with-all, to some of their family or neighbours. Unfortunately the destruction of our records prevents our ascertaining without great difficulty the exact percentage, but I believe that at least 12 per cent. of landed properties sold by auction find their way back to the original proprietors within three years entirely by private compromises.

2. Independent of these, which arise spontaneously amongst parties themselves, Government officers can bring about many more. I have often done so, not of late, for these matters require much spare time, and now-a-days reports and nukshas are too numerous to leave *any* spare time; but in former days, when I first came to Etawah, and as a joint in Mynpoorie and elsewhere. And now I think that in, say, 90 per cent. of cases in which the transfer was not more than from seven to ten years old, in which the lands were still held by the original transferree, and in which the old proprietors had the means to make a fair offer, I could at once effect a compromise. But the difficulty is that the old proprietors themselves *rarely, very* rarely, have the means, and of course you cannot ask an auction purchaser to relinquish his purchase for nothing. The sons, it is true, go into the Army, or get into civil employ, and make much money, but generally before this comes about the purchasers have built houses, dug wells, planted groves, and been gathered to their fathers; and then in most cases nothing would induce their descendants to part with what has so become their hereditary lands.

3. I don't think, therefore, that very much more can be done in this way than is now done. Every good district officer, necessarily as it is, labours as extensively as his other duties will admit to prevent, in the first instance, cases going to the civil courts, and to mitigate in the next place the misery, injustice and crime to which these latter give rise, when cases have gone to them. To appoint special officers to effect these compromises would be useless, as it is local influence and knowledge that is required, while the local officer already does *as* much as he can screw out time for, and can do no more. As for those officers (if there be any such) who do not give attention to these matters, and do not of themselves do as much in this line as their other avocations will admit of, I should fancy their influence must be small, and that it would, therefore, be useless to impose the task upon them as a duty. The up-shot of all is that compromises, as it is, are often made by the parties themselves, without

the intervention of any Government officer; that influential Government officers can and do effect a certain number more; and that I fear no very important results would be attained by the issue of formal orders directing all district officers to endeavour to bring about such restitutions of landed property.

4. As regards the limitation of the powers of the lower civil courts, I myself see no use in it. It is the system not the grade of court to which objection is to be had. If it is right (which of course I utterly deny) that all hereditary landed property should be indiscriminately sold in execution of decrees of court, no matter of what kind, then it would be clearly unjust to throw obstacles in the way of exercising this right, by reducing needlessly the number of tribunals that can authorize it. If it is wrong, then neither Judges nor Moonsiffs' courts should have the power of enforcing it. Here and there a Moonsiff may be corrupt (such, however, is not believed by the Native public to be common), but as a whole I don't think that the Moonsiffs' courts are a bit worse than the Judges', and I can see no possible reason for debarring the one and authorizing the other to enforce sale.

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From C. Currie, *Esq., Offg. Collector, Boolundshuhur, dated* 6*th April* 1859.

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2. Before proceeding to express my opinion on the various points raised in the despatches, I shall endeavour to describe the evils for which it is now proposed to devise a remedy. I consider this the more necessary as, although the existence of an evil calling for an immediate remedy is acknowledged, yet it appears to me that neither its extent nor its cause are fully appreciated.

3. The primary cause of the evil is described in paragraph 2 of the despatch from the Right Honourable the Secretary of State for India No. 4, dated 25th January 1859, as pride of ancestral rights, disdaining to succumb to proverty induced by the operation of a law of equal succession, and consequent debt. This infers a straightforward transaction between creditor and debtor, leading to natural results, described by the transfer of proprietary rights from encumbered landlords to wealthy capitalists.

4. Had the evil complained of been brought about, as suggested, by the operation of a law which could not be gainsayed in principle and fairly carried into practice, the remedy would not be beset by so many difficulties as now encumber it. But I shall endeavour to show that by far the greater portion of the evil has been caused by chicanery and fraud practised in Government courts in the execution of laws enacted, and under rules of procedure sanctioned by Government, and for which

consequently Government must, in a great measure, be held responsible.

5. In the first place I think too great a stress is laid on the effects of the law of equal succession, although it does undoubtedly lead to extensive sub-division of landed estates, yet in the case of proprietary brotherhoods this does not necessarily lead to impoverishment. A feeling of clanship pervades the whole community to such an extent that poverty properly so called is unknown. Numbers take service and leave the cultivation of their ancestral holdings to their relatives, perfectly confident that no attempt will be made to deprive them of their rights in their absence. The savings of service become a source of wealth to the community.

6. I do not deny that debts are contracted, but I think that their real extent is by no means so great as is supposed. Their apparent magnitude, as tested by the decrees issued in the civil courts, is to be ascribed to the facilities granted by these courts to the attainment of fraudulent decrees. The facilities to which I allude are, 1*st*, the issue of decrees on mahajun's books, uncorroborated by other evidence; 2*nd*, the issue of decrees for sums claimed as due by verbal evidence *alone*, without the attestation of books or other corroborative evidence; 3*rd*, the unlimited amount of interest allowed to be charged.

7. On the first point it is scarcely necessary to remark how entirely the debtor is at the mercy of the creditor. Unable to read or write, the borrowing land-owner is obliged to trust to the good faith of the mahajun. Monetary transactions extending over a number of years, the unlucky debtor suddenly finds himself sued for a sum far beyond his competence to pay. Unable to retain in his memory the several items of a lengthened transaction, he has no means of refuting the entries exhibited in the mahajun's books. Even if these books are correctly kept, the mahajun has great scope for fraud; but where the regularity of the books is not insisted upon, his power is unlimited.

8. I will instance a case which has lately come under my notice. Ameechund, a wealthy trader of Khoorja, issued a decree for Rs. 9,826-7-9 against the heirs of Ruttun Sing, and a precept was sent by the civil court for the sale of the rights and interests of the defendants. Finding that the defendants were Rajpoots, and being opposed to these sales, I endeavoured to effect a compromise, and induced the parties to abide by the decision of certain arbitrators, of whom I was one. The whole papers, along with Ameechund's books, were laid before the arbitrators, when the following facts were elicited: Ruttun Sing began to have transactions with Ameechund in S. 1904. In S. 1905 a balance was struck, and it was found that Ruttun Sing owed Rs. 936-1-6, and in S. 1909 a balance of Rs. 4,930 was shown in the books. On examining the items, however, it appeared that during the six years that these transactions lasted Ameechund advanced Rs. 5,705-9-3, and was paid Rs. 2,431-6-6, consequently the balance of Rs. 4,930 was made up of actual balance Rs. 3,274-2-9, and interest Rs. 1,755-13-3. This was in

1852. In 1854 Ameechund sued for Rs. 4,930 original debt and Rs. 269-8-0 interest.

		Rs.	As.	P.
Total	...	5,199	8	0
He obtained a decree with costs	...	899	12	3
And costs of appeal ...	...	263	15	8
Total	...	6,363	3	11
In 1858 he issues the said decree, with interest to date	...	3,463	4	0
Grand total	...	9,826	7	11

9. It will thus be seen that of the whole sum sued less than one-third had been actually advanced in coin, even allowing that his books were correct; but in his daily register book, roznamah bohee, I found two entries following one another, indicating sums advanced to the defendants on the 1st and the 10th of the month. Indeed, I need scarcely remark that, besides the books, Ameechund had no voucher to produce in attestation of his claim, and the original debtor being dead, his sons were utterly unable to verify the correctness of the entries shown in the book.

10. Cases of equal hardship have come under my notice in which decrees have issued for sums claimed on the verbal testimony of witnesses—a source of proof, the validity of which any one at all acquainted with Native testimony can appreciate.

11. Again it often happens in proprietary brotherhoods that debts incurred on behalf of the whole community are contracted in the name of one of the headmen. As long as he lives his influence is sufficient to enforce the fulfilment of the conditions of the loan. But when he dies the creditor, finding his terms unheeded, sues the heirs of the nominal debtor, and sells up their real property. The plea that the debt was incurred on behalf of the whole community is ignored, as joint responsibility is only recognized in the revenue courts. I have known instances in which the unfortunate headman, even during his life-time, had decrees issued against him for the debts of the community.

12. If to the above we add the number of *ex-parte* decrees issued in the absence of the defendants, in the majority of which no intimation of the suit having been instituted has reached the defendants, some approximate conception of the amount of injustice done by the civil courts may be attained.

13. I have dwelt thus fully on these points, with a view to combat the idea promulgated in paragraph 3 of the despatch No. 4, that the difficulties are such as scarcely to admit of any alleviation in regard to past transactions. I have endeavoured to point out how great have been the shortcomings of Government, through their authorized courts, in

order to insist on the absolute necessity of Government granting alleviation, whatever the difficulty, whatever the expense.

14. Fully acknowledging the necessity of affecting a compromise, I can hold out no hope that there will be any willingness on the part of auction purchasers to relinquish their purchases in favour of the ejected proprietors on receiving a fair compensation. If any option be allowed, no compromise will be effected, as it is a weakness of human nature to revel in the enjoyment of unlawful in preference to lawful gains. The relinquishment of estates thus gained must be rendered compulsory by law, and the circumstances under which the law will be enforced should be defined.

15. The conditions should have reference to the present *status* of the ex-proprietor. It is not an invariable rule that the ousted proprietor settles down as a tenant. In cases in which they have deserted their ancient homes, I think interference would be uncalled for. But where the ex-proprietors are still found as tenants upon the estate, and claim to be reinstated, I would reinstate them on their paying into court a sum equivalent to the amount paid by the purchaser. The profits of the estate would amply indemnify the auction purchaser for non-payment of interest. I would not limit the right of the original proprietor or his heirs, but would allow claims from any of the brotherhood, provided they or their ancestors were former co-sharers of the estate. Regulation I. of 1821 might be taken as a precedent, and the execution of the law entrusted to a special commission. By this process the validity of the title would not be impeached, as the justice of the civil decree would not be impugned.

16. As regards the future, I do not think that the limitation of the authority of the subordinate civil courts will be found a sufficient remedy. I am an advocate for the entire abrogation of the system, partly because it is a process unknown prior to our rule, and partly because it appears to me to be unnecessary.

17. On this latter point I would remark that my experience leads me to believe that but few *boná fide* transactions are made the subject of litigation in the civil courts as long as the dealings between the creditor and debtor are straightforward. There is no difficulty experienced in procuring an amicable arrangement, by which the debtor either mortgages his property for a term of years, or comes to some other agreement with the creditor, without the intervention of the civil court. The withdrawal of the power to bring to sale landed interests for debt would tend to force on results similar to these, and would also in a great measure diminish debt by making capitalists less willing to lend. If, however, it should not be deemed advisable to forego the system altogether, I would recommend, in addition to the limitation of the powers of the sudordinate civil courts, the introduction of a law of entail, authorizing the owner of real property to entail such property either in favour of one or more of his sons, or direct descendants. Although this power may be given by the Hindoo law, yet it is not acted upon,

and the law has been allowed to become a dead letter. The enactment of a new law on the subject might be the means of gradually introducing the law of primogeniture—an object greatly to be desired.

18. In this case it would be necessary to define the extent to which the real property of the creditor could be made available for the recovery of his debts. Any rule enabling the creditor to obtain possession during the life-time only of the debtor would, under the present state of Native morality, be an incentive to suicide. It would therefore be preferable to authorize the transfer of the property for a term of years, irrespective of the life of the debtor, leaving it optional to his heirs, in the event of his demise, before the expiration of the term, to regain possession on payment of the balance due.

From F. O. MAYNE, *Esq., Collector of Banda, dated Banda, the* 25*th April* 1859.

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2. The difficulties under which I infer the landed proprietors of India are said to labour are—1*st*, the operation of the law of equal succession, which leads to the extensive sub-division of landed estates, or to the joint tenancy of a large number of sharers, and is followed by the impoverishment of numerous families, which once were considered wealthy; and 2*nd*, the natural results thereof under our present law and policy, viz., debt and sale of the debtor's landed property, of whole estate, or, what is far worse, the admission of strangers by the sale of a portion of the estate.

3. On the first difficulty, although in the correspondence under notice I perceive no sentiments indicative of a disposition to interfere with the law of equal succession, yet, inasmuch as the advantage of introducing a law of entail in India as a remedy against the evils of joint succession has been generally discussed of late, it will not be out of place to record my dissent to any such proposal. For such a law would, if compulsory, undoubtedlly be received with the strongest disfavour by the Native communities, and unless it were compulsory, none would, in my opinion, be found to avail themselves of its provisions. It is a law entirely foreign to their ideas of justice, and they would regard it as a serious infringement of their rights and usages. When the land tax is easy and due care in its assessment has been paid to the means and number of the community who are dependent on the produce of the land for bread, I think you will seldom find any evils arising from the law of equal succession. The just remedy against the evils inveighed, viz., is therefore, in my opinion, a light assessment whenever the estates are owned by large co-parcenary communities. With fair rates and unimpeded resources the land is likely to prosper with none so well as the old proprietary community.

4. On the second difficulty, the unrestricted transfer of land by sale, my opinion is very decided. The sale of land, either for balances

of revenue, or in satisfaction of decrees of court, has always been unpopular with our Native subjects, and the results most unsatisfactory.

5. I do not so much judge from the events of the past two years, nor do I place much stress on the fact of the auction purchasers in the course of the late disturbances having invariably been ousted by the ex-hereditary zemindars. Private purchasers of land were dispossessed in exactly the same manner, whatever may have been their former behaviour towards their tenantry. And it is a patent fact that rebellion was not confined to ousted zemindars. Some of our most staunch opponents and persevering rebels were men who had retained their ancestral property under our rule. We should, I think, be careful of drawing too hasty conclusion from facts which have accrued during the late rebellion. The Natives in many cases acted more from impulse than from any preconceived notions of any wrong which they wished to redress. The whole nation, as the Natives themselves say, went mad, and did many things in their madness, for which in their sober senses they can give no reason of justification. The auction purchasers were ousted because they happened to exist; but, in truth, the landholders still in possession of their paternal acres, and landholders deprived of their hereditary estates, whether by private sale or by auction sale, as well as many auction purchasers, all rebelled alike, and I am not aware of any of the old hereditary families having actively co-operated with the Government authorities in the suppression of disturbances, except when we had might and strength on our side. In the Banda and Allahabad Districts at least I can answer for the fact that most of the old hereditary families to whom the tenantry were attached merely used their influence and strength against us.

6. Talookdars, or single proprietors in possession of their hereditary estates, possessing all the feudal power and influence of large communities, have occasionally remained on our side, and done excellent service by active co-operation, but not always so. The landed communities, or large brotherhoods on the other hand, have no power or influence beyond the limits of their own estates; and unless we are in power and able to influence them by a long line of British bayonets, it is less than a question which side they take. They almost invariably ally themselves to plunder and disorder. In the case of a general rebellion, like that we have just experienced, therefore, I think it matters very little whether the lands are held by the hereditary lords of the soil or by interlopers. Indeed, I would warn the Government against going into the opposite extreme and placing the land entirely in the hands of the hereditary stock. We have generally found the auction purchasers stand by us, and although helpless as a physical force, they have been most useful in affording information and other assistance. It is I think just as well to retain the second element to a certain extent.

7. Still, as I said above, the ready transfer of land from the hands of the hereditary proprietors to those of new men is unpopular,

and attended with much social evil. For simple purposes of police and the detection and suppression of crime in peaceable times, the difficulties occasioned by the ejection of the original owners of the soil are very great. The hereditary landlords of India are supreme on their own estates. Nothing can occur without their knowledge; they know the character of every man in the village; and no one can reside in the village without their concurrence. Their word is law, and they are all-powerful for the suppression of local disorder and the detection of crime. Directly the estate is sold, the police responsibilities are transferred to the new owner, who is at perpetual war with his new tenantry. He cannot gain a footing in the village without armed attendants, or the aid of the Magistrate, and he consequently has not the slightest moral control over the people, and knows little or nothing of what is going on, and is generally next to useless to the Magistrate as an aid in the suppression of crime.

8. For these reasons I am a strong advocate for restriction upon the future transfer of landed property, but at same time maintain that the exchange of landed property, which has hitherto taken place, is not altogether without its advantages. What we have to guard against now is the strong tendency shown of late years to root out the old landed proprietors altogether. If we can now stop that, I think the medium already gained is an advantage.

9. The auction purchasers will never willingly relinquish their purchased rights in favour of the ejected proprietors, and any attempt at coercion of the men who have as a body found it to their interests to stand by us, in favour of those who have almost invariably behaved badly, would be as unfair as it would be impolitic. Auction purchasers on the re-establishment of our rule, as a matter of course, fell back into their old places, and they value landed property far too highly ever to be induced to relinquish it. Besides it would be regarded as a weakness on our part, and something that they had gained by the rebellion, if the ex-hereditary proprietors in consequence of their rebellion regained the rights of which they have been legally deprived. We must let the past stand, and can without injustice draw no distinctions now between our hereditary proprietors and auction purchasers.

10. The transfer of property has, however, gone quite far enough, and I would in future put a stop to *all* sales of land by decree of court, and would never allow sales of land for balances, unless gross contumacy or collusion to defraud the Government were most clearly proved.

11. Sale of land might also be allowed to remain legal when confiscated for rebellion, or for wilful and gross neglect of police duties. Such would very seldom occur.

12. Private sale, gift, or mortgage must also be allowed; but they should only be allowed with the consent of the Local Government upon a full report of the facts in each case.

13. In satisfaction of decrees of court, and in all ordinary cases for balances of revenue, a farm or transfer of the land for a limited

period, say twelve years only, should be allowed, and even then I woul allow the zemindars' malikhanah, and hold them still strictly responsibl for good order and the detection and suppression of crime.

14. For revenue purposes, so as to avoid sales or transfers of an kind for balances as much as possible, I would revert to the origina dates of payment, viz., 15th April, 15th May, 15th November, an 15th December, as they are still in Bundlecund, instead of those no in use in other provinces, and thus give the tehseeldars a certain degre of control over the crops before they are removed from the ground This is a process which the people themselves perfectly understand an do not object to. I doubt though if even that would be necessar wherever the assessment is really fair and light, and the state of th agricultural population flourishing.

From J. W. SHERER, *Esq., Collector of Cawnpore, dated Cawnpore, the* 13*t* *May* 1859.

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2. The great source of the evil complained of seems to lie in th direct engagement of Government with proprietors of small estates Possessing little or no capital, and being destitute of that prudence whicl warns him to take advantage of favourable harvests as a provisio against bad years, the cultivating proprietor is driven by a season o scarcity into the hands of the money-lender. High instalments and sharp practice complete his ruin; and a suit in the civil court transfer his land to the capitalist.

3. I cannot see that any remedy would be provided for this stat of things by limiting the powers of the civil courts. The ruin whic is brought upon the small proprietor by a civil suit would probably b only accelerated by depriving him of the resource of borrowing, an exposing him, on the first occurrence of default, to the direct action the revenue courts. Nor can I suggest any expedient which woul meet the exigency of the case. It seems to me that the questio reduces itself simply to one between debtor and creditor; and it difficult to devise an arrangement between debtor and creditor whic shall not defeat itself by injuring credit.

4. As regards any compromises between deprived hereditary pr prietors and auction purchasers who have been violently dispossesse in the late disturbances, I am unable to see how such could be effecte unless Government undertook to compensate the latter, which I pr sume Government is not prepared to do.

5. I do not think what has happened can be remedied, but I d not know that the decline of the small landholders may not be arreste in each district as its settlement lapses.

From J. STRACHEY, *Esq., Officiating Collector, dated Moradabad, the* 19*th May* 1859.

I HAVE the honour to forward a paper on the subject of forced transfers of landed property in these Provinces.

I have thought it best to keep separate the question of the practicability of bringing about compromises between the old hereditary proprietors and the present holders, and have therefore not entered into that subject.

In this district a semblance of regular government having been kept up throughout the late disturbances, the dispossession of the new by the old proprietors took place to a less extent than happened in many other parts of the country.

Whatever may be the case elsewhere, I have seen here no sign of any inclination on the part of auction purchasers to relinquish their property in favour of the former owners. Nor have I been able to hear of any important cases in which the ejected proprietors retain any means of buying out the present holders, however anxious they may be to do so. The ruin of the former possessor was almost always complete before the estate was sold.

I think this a dangerous question to open at present. It will be time to consider the redress of former wrongs of this kind when we have done something to guard against their recurrence in future, and to stop their present progress.

If any real opportunity present itself for bringing about an equitable and amicable arrangement, by which the old proprietor of an estate can be restored to its possession, it ought no doubt to be taken advantage of. But under existing circumstances I think that district officers should only interfere in such matters with the utmost caution, or people will begin to doubt the value of the titles to land which we have ourselves granted.

There are so many loose notions prevalent regarding proprietary rights in land that I doubt the expediency at present of the Government issuing any instructions of the nature suggested in paragraph 4 of the Secretary of State's despatch.

On forced transfers of landed property in the North-Western Provinces.

THE excessive number of transfers of landed property from the hands of the hereditary proprietors to those of strangers has long attracted notice; but the events of the last two years have placed the subject in a new light, and have shown very forcibly the political dangers which are entailed by the dispossession of the old families. So much has been said of late about this that I do not wish to enter more particularly on this part of the subject. These evils, of which every body is complaining, are real, and I am far from underrating their importance; but there is a strong tendency, it appears to me, to seek

for remedies in a wrong direction. Nothing but the most urgent political considerations could justify measures imposing checks and prohibitions on the transfer of land, and I disbelieve, for my part, that any such political necessity now exists.

2. The causes which have led to the dispossession of so many of the old proprietors of the land have been most variously stated, and, in my opinion, seldom correctly. Until these causes are clearly understood, there is little hope that the right remedies will be applied. The Secretary of State, in his despatch of the 25th January 1859, speaks of the operation of the Hindoo law of succession, which has led to the extensive sub-division of landed property, as one of the main causes of these transfers. I doubt whether this has had much to do with the matter. I see no reason for supposing that the land is generally more sub-divided now than it has been for centuries. I believe that the tendency is rather towards the consolidation of small landed properties, and that the chief causes of these transfers are to be looked in another direction.

3. It has been often declared that the main principle of the existing revenue system in these Provinces is that it alters nothing, and only maintains and defines the rights and obligations which it finds established. This belief is, I think, a very erroneous one. The system established by us has been little less novel to the people than the settlement of Bengal was to that country in the last century.

I do not say that our system is not a good one, but merely that it is not what it professes to be.

Before our Government was established there was practically no such thing in the possession of individuals as proprietary right in land according to our ideas of what property is.

This is probably true in every primitive state of society, and it was especially the case in India. Such rights of property as did not appertain to the Sovereign belonged, as a general rule, rather to a community than to an individual.

It is clear that this state of things must pass away with progress in civilization, and it is no reproach to our system that it has recognized this fact. But the principal has been carried out too rapidly and too rigidly to its logical conclusions.

Property bears with it heavy obligations, and in no country are they heavier than in India. Knowledge is not learned in one generation, and the ancient proprietors of the land were ordinarily quite unable to support the burden that was thrown upon them. Theoretically, our revenue demand is not excessive in its amount, and if the proprietors had been generally men of capital and intelligence, they would have experienced the great advantages of clearly defined rights, of long leases, and an uniform demand. But they were generally very poor and very ignorant, and the system has pressed heavily upon them. That the load has become a crushing and hopeless burden is the fault, not of

that system, but of the rapacity and dishonesty of the money-lenders, and the incompetency of our civil courts. But of these matters I shall have to speak further on.

The landholders had been accustomed from time immemorial to pay every year a portion of the produce of the land to the Sovereign. This was the sole idea that they had of the Government demand, whether it was paid in money or in kind, and it was altogether a new notion to them that the assessment should be fixed on another principle. I believe that nine out of ten of the proprietors of land have been, and are to this day, quite incapable of understanding the advantages which the new system really holds out to them. If there be a good harvest they think it strange and unintelligible that the Government takes so little. If the harvest be a bad one, they think it the extremest tyranny that the Government takes so much.

Their forefathers having lived for centuries from hand to mouth, the idea of providing from the abundance of one year against the deficiencies of another is something which they seem quite incapable of understanding. Least of all could they appreciate the fact that the recognition of their proprietary rights made the tenure of their lands a very different thing from what it was before, and that its compulsory alienation was a necessary result of their inability to meet their new oligations.

This I believe to have been in the great majority of cases the origin of the difficulties of the old proprietors. The next step was to fall into the hands of money-lenders, and thence to the civil courts, and final ruin—the progress was easy and certain.

If the Government demand were much lighter than it is, I believe the same thing would go on, though less rapidly. It is not that the demand is in itself too high, but that the system under which it is levied has imposed on the proprietors obligations and responsibilities which they cannot understand, and which they cannot meet.

4. Putting aside all questions of merely political expediency, there is much to regret in the extinction of the ancient families who have held possession of the soil for centuries; and although a great deal that we hear upon this subject is founded on a spurious sentimentality, and deserves little consideration, the attachment which the people bear to their ancestral lands cannot be wisely disregarded. If our system of administration be not in accordance with the feelings of the people, it cannot be successful. Yet although the fate of many of the old proprietors has been quite undeserved, and must be regretted, it must not be forgotten, on the other hand, that the process that has been going on has not been a purely mischievous one. There can be little doubt that the new proprietors are generally men of greater wealth and intelligence than their predecessors. The greatest possible of evils in any country is that the proprietors of land should be unable to undertake any works for its improvement, and the curse of landlords impotent for good is doubly heavy in a country which is almost entirely an agricultural one.

While, therefore, I admit the evils that are complained of, I thi we shall be running into something much worse if we attempt to reme them by placing restrictions upon the transfer of land; and whil believe that these evils had their origin in the system which we ha ourselves established, I nevertheless think the tendency of that syst to be in the main good.

To think of now enforcing the obsolete doctrines of the Mitaksha of establishing systems of entail, and interfering with the proprieta rights and obligations of individuals, would be to begin upon altogether retrograde course of legislation.

5. This brings me to the consideration of the practical measur that ought now to be adopted.

I think that much of the difficulty which is found in dealing wi such questions as this arises from the notions with which Engli people are imbued on the subject of the interference of Governme with matters which in our own country are properly left to priva individuals. Hardly a thought has been given to the improvement the condition of the agricultural community by other than legislative administrative measures. This is not a question to be argued here, b it is my conviction that there are hardly any duties which in countri more advanced in knowledge and civilization fall on the landlord an capitalist which may not in this country be undertaken with propriet by the Government.

There is one measure bearing directly on the subject now und discussion which would, I think, be of the greatest utility.

I have stated my opinion that the origin of the debts which le to these frequent transfers of property is, in the great majority of case the pressure of our revenue system. Although the main principles that system are sound, it has, I think, been administered in a very har and unbending manner. Collectors and their subordinates have far t much become mere machines for grinding revenue out of the peop But no amelioration or relaxation of our revenue administration w give any real relief so long as the landholders find it impossible obtain advances of money on fair and reasonable terms.

No one who has not had the matter brought practically and direct to his notice can have the least conception of the knavery and rapaci of the money-lenders to whom the landholders of these Provinces obliged to have recourse. Whatever ought to be the case in theory, is very certain that questions of abundance or scarcity of money, greater or less demand for loans, of good or bad security, of competiti and the like, have in practice comparatively little to do with the sett ment of the terms on which agriculturists in this country ordinar obtain advances of money. The conditions depend far more upon degree of simplicity in the borrower, and of rapacity in the lender, th on anything else.

Our civil courts have unhappily been the ready instruments for these dishonest operations, and our system of judicial procedure, instead of checking, has stimulated and exaggerated them.

No reform of our courts will alone meet this great evil; and I believe it to be of the highest importance that the Government should not continue to shut its eyes to the ruin in which this widespread system of fraud, or of something little better, is involving the proprietors of the land. They are incapable of protecting themselves, and the Government must interfere in their behalf, or bear, in the opinion of the people, all the discredit of their ruin. There is nothing in the simple alienation of landed property which is in itself distasteful to the people of this country. I believe that in the great majority of cases in which the old proprietors during the late disturbances resumed possession of their estates, they were enabled to do so, not because the people considered that they held an indefeasible right to the soil, but because the transfer of the land to a stranger was only the final step in a long course of dishonest proceedings by which the former proprietor had been undeservedly brought to ruin.

The establishment of banks in every district, under the control of the Government, for the purpose of making loans to the agricultural community, secured by mortgage of the land, would be a measure, the importance of which it is impossible to exaggerate. There would be no real difficulty in this if the Government would take up the matter. There would be no lack of capital, for under proper management the security of investment would be complete.

The people are incapable of doing anything of this sort for themselves, and nothing will be done until the Government admit that it is one of their duties to take the initiative in such matters. We have an example, if I understand its constitution rightly, in the French *crédit foucier*, of the kind of institution which I would establish here. Having at present no access to books, and nothing but my recollections to trust to, I cannot say to what extent the details of the French system could be adopted in this country. But I believe the principles on which the *crédit foucier* is founded, however foreign they may be to English ideas, are quite applicable to our case. Until some measures of this sort are adopted, I think that legislative interference is necessary as a check upon the proceedings of the money-lenders. I would provide that no decree be given for interest exceeding in amount the principal of the debt. However objectionable this may be in theory, it has become practically necessary.

6. The remarks on the procedure of the subordinate civil courts, contained in the 6th paragraph of the Secretary of State's despatch, are no doubt true; but I can only partially admit the expediency of the remedies that are suggested.

It is of the utmost importance to maintain the principle that the whole property of a debtor is liable to be applied for the satisfaction of his *bonâ fide* obligations. I see no reason in a provision that sales of

real property shall not be allowed in cases below a certain fixed amount, nor do I think that the proposal to make the sanction of the Judge necessary to sales is a good one if it goes no further than this. It must be clearly laid down under what circumstances the Judge can refuse his sanction. Nothing can well be worse than to leave such questions to be decided, as I understand they are in the Punjab, according to the opinion or caprice of individual Judges. Whatever be the liabilities to which landed property is subject, they ought to be distinctly defined by the law.

There can be no doubt that land has constantly been sold in the most unnecessary and unjust manner in satisfaction of the decrees of the civil courts. A remedy for this is urgently required; but it is not to be found in merely artificial checks on the transfer of land. If our system be rendered a just one, we shall need nothing more.

7. The subordinate civil courts ought, I think, to have no power to try any suits except those for money and personal property, and in cases of execution of decrees they ought to have no power to order the attachment or sale of any but movable property.

All cases involving the right to land or other immovable property, and all applications for its attachment or sale in execution of decrees, should go to the Judge; no application of this sort should be received until every effort had been made to realize the amount from the movable property of the debtor. The most important cases that come into the courts are these applications for the sale of land in satisfaction of judgment debts.

With respect to them, the new Code of Civil Procedure (Act VIII. of 1859) contains some excellent provisions, the effect of which will be great if they are carefully worked. I refer especially to Clauses 194, 243 and 244 which authorize the courts to order the amount of a decree to be paid by instalments, and to postpone the sale of land under certain conditions.

I think, however, that the two last-mentioned clauses might be greatly improved.

The civil courts have no means at their disposal for ascertaining, in a satisfactory manner, the real capabilities of an estate, and I think that whenever an application is made for the sale of land in satisfaction of a decree, the case should be referred to the Collector. It would be his duty to make a complete enquiry into the value and capabilities of the land, and if it appeared to him that the amount of the judgment could be recovered within a reasonable time, either by the temporary alienation of the land, or in any other manner, he would report the proposed arrangement to the Judge, who would confirm it if the security for payment seemed to him sufficient.

8. There is another point regarding the sale of land by order of the civil courts which is of much importance. It is notorious that land is now frequently sold by the Collectors at a price enormously below

its fair value. There is so little real competition in most cases that collusion between intending purchasers is of not unfrequent occurrence, nor have people generally any sufficient means of ascertaining the real value of estates.

There is a provision in the French Code intended for the protection of the rights of minors, the principle of which might be usefully adopted in this country. When a final order is given for the sale of immovable property, a valuation should be made of it by the Collector in the most careful possible manner. If at the sale the offers for the property did not amount to a sum equal to the valuation, the sale should be suspended for one month. During that time the Collector would enquire into the reasons which had prevented the sale; he would endeavour to obtain fresh offers for the property; and, if necessary, he would revise the valuation.

When the property was next put up for sale it should be sold absolutely to the highest bidder.

9. The improvement in the procedure of the civil courts has of late years been rapid, and we may reasonably hope that it will continue. It is a safe assertion that no reform can take place in the law which will not bring with it an amelioration of the condition of the agricultural community. Much remains to be done in clearing away the remains of the old ceremonial and technical rubbish of our system of legal procedure. Every encouragement has been, and is still to a great extent, held out to dishonest litigation, and of classes of the community the principal victims of this system have been the proprietors of land.

Some day, I hope, we may see, among other reforms, the establishment of courts of conciliation, whose special function it will be to preserve the people from any litigation at all, except that which is really unavoidable.

JOHN STRACHEY.

From H. W. Dashwood, *Esq., Register, Sudder Court, dated Agra, the 16th May* 1859.

Present:

R. B. Morgan, Esq., *Judge.*

R. Money, Esq., *Officiating Judge.*

M. Gubbins, Esq., *Officiating Judge.*

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2. The Court direct me to say that their opinion on this most important question has been so recently expressed in connection with the Bills for simplifying the procedure of the civil courts, and for the establishment of Courts of Small Causes, that in answering your present requisition they will content themselves with a simple reference to their

former letters in respect to points which have been already discussed, and enter into detail on those points only which have not before been mooted.

3. In paragraph 2 of his despatch dated the 25th January last the Secretary of State for India narrates the different steps which under our system lead to the compulsory transfer, through the agency of the civil courts, of real ancestral property, and the evil consequences which result from it. In so far as Lord Stanley may be held to reiterate the argument advanced by the Honourable Court of Directors in paragraphs 4 and 5 of their despatch, dated August 4, 1858, as quoted in the margin, the Court dissent from his views, that point having been disposed of already in paragraph 5 of their letter dated the 24th December 1858; but the Court entirely concur in the Secretary of State's remarks as to what has been the practical result of our system. The mutiny has made that sufficiently manifest, though the Court are not led to believe that the tenantry have shown during the disturbances that attachment to their hereditary landlords which is asserted in the despatch.

It has been held by our highest courts of justice that under the Hindoo law, as it prevails wherever the Mitakshara is respected, the alienation by a father of immovable ancestral property without the consent of the sons, except on proof of necessity, is illegal; and it is not easy to understand how property which cannot be legally sold by the individual himself may be legally sold by a court of justice in satisfaction of his personal debts.

4. The Secretary of State, after admitting that the difficulties arising out of the unrestricted transfer of real property scarcely admit of any alleviation in regard to past transactions, proceeds to say that the partiality manifested recently for their old landlords by the tenantry of estates sold at auction may have given rise to a willingness on the part of auction purchasers to relinquish their purchases in favour of the ejected proprietors on receiving a fair compensation. He thinks, therefore, that officers in the revenue branch of administration might take advantage of such opportunities as might offer for restoring in this way the old proprietors to their estates.

5. The Court must say that they look upon this as a very dangerous experiment. Parties willing to come to an arrangement would need no assistance from the officers of Government, and the suggested interference of the authorities would be ultimately productive of increased discontent, by reviving again, only to prove futile, hopes which had long been abandoned. In nine cases out of ten poverty caused by extravagance has, in the first instance, led to the sale of the village. The former proprietary, who more generally occupied the lands themselves, have lapsed into tenants, and as such are not likely to become richer; and once lost, there is little hope of their recovering means sufficient for regaining the property. Under these circumstances no benefit would, in the Court's opinion, result from encouraging fruitless expectations.

6. In regard to the future, Lord Stanley is of opinion that the circumstances are such as to call for the adoption of some palliative measures; and after noticing the various changes which have taken place in the constitution of the Moonsiffs' courts, raises the question of altering their existing constitution, and of reverting to the system under which they were tribunals for the adjudication of suits only for money or other personal property, at the same time enlarging their jurisdiction. His Lordship further proposes to prohibit the attachment and sale of real property in cases below a fixed amount, and to declare a Moonsiff incompetent in suits exceeding that amount to issue such a process without the previous sanction of the Judge.

7. The Court remark that since their letter of the 24th December was written, a considerable alteration in the law has been made, and another important alteration proposed. The Court refer to Section 244 of Act VIII. of 1859 which makes provision for the temporary alienation of land on the representation by the Collector that sale is objectionable; and to Section 10 of the revised Bill for the establishment of Small Cause Courts which restricts execution by such courts to personal property, but authorizes any *civil court of general jurisdiction*, in which they presume is included a Moonsiff's court, to proceed against a debtor's immovable property on presentation of a certificate that anything remains due after execution against movable property.

8. The first alteration the Court consider a most judicious one. In respect of the second they do not at present see what advantage is likely to be gained by transferring the power of selling land from the Small Cause Judge to a Moonsiff. If land is to be sold at all in execution of Small Cause Court decrees, it seems the simpler process for the Judge of that Court to move the Collector than for the Moonsiff to put in force the decree. But the Court have not as yet had an opportunity of perusing the debates on the revised Bill, and therefore they defer passing any definite opinion on the subject just now.

9. With reference to the proposition of the Secretary of State of reverting to the old system under which the Moonsiffs' courts were tribunals for the adjudication of suits only for money or other personal property, the Court admit that it is a question well worthy of the attentive consideration of the Legislative Council, in connection with the constitution of the courts, which subject must soon come under discussion. One great advantage of such a measure would be that all real actions would be heard by more experienced and better paid Judges than Moonsiffs. At the same time, however, the Court observe that this question is distinct from that of the expediency of the indiscriminate sale of land in execution of decrees.

10. The Secretary of State further suggests that a check might be imposed by providing that no process, either for attachment and sale of real property, shall be allowed in cases below a fixed amount. The Court do not think that benefit would arise from limiting the sale of land in execution of decrees to cases above a fixed amount; but they are inclined

to adopt and considerably to extend the third proposition made by Lord Stanley, and to recommend that in no case whatever should a Moonsiff have the power of ordering the attachment and sale of land paying revenue to Government, without the previous sanction of the Judge; that officer in deciding upon references of this nature made by the Moonsiffs subordinate to him would of course be open to receive any representation which the Collector of the district, under the authority vested in him by Section 244, Act VIII. of 1859, might think proper to submit for the purpose of staying the sale of the land sought to be sold; at the same time it would be necessary to define the discretionary power of the Judge, and to lay down distinct rules as to the class of cases in which sale was to be had recourse to.

11. The Court believe that by some such measure as this a considerable check would be placed upon the indiscriminate sale of land in satisfaction of decrees of court, and they would add this to the other measures recommended for adoption in their letter No. 1457, dated the 24th December last. For the sake of reference these measures may here be recapitulated—

1st.—The adoption of that provision of the Punjab and Saugor rules, which compels the creditor to proceed in the first instance against the personal property of his debtor.

2nd.—The clearance of liens from property about to be sold in execution of decree.

3rd.—To limit sales of real property to decrees for debt in which such property had been distinctly hypothecated, and to cases of fraud on creditors.

From F. B. Pearson, *Esq., Offg. Civil Judge, Saugor and Nerbudda Territories, dated Jubbulpore, the* 14*th April* 1859.

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2. The objection to the sale of landed estates for the realization of arrears of revenue or in satisfaction of decrees of the civil courts, on the ground that the law of the Hindoos is thereby violated, is one which I have never heard alleged by Hindoos; and if their law only forbids the alienation by a father of immovable ancestral property without the consent of the sons, *except on proof of necessity*, it appears to me that the cases supposed fall within the exception specified, and that the objection does not lie, as it can hardly be contended that a necessity is not created by the obligation of a debt. Whether or not in the cases supposed the rights of heirs as well as of the debtor are conveyed by the sale is another question; but the circumstance which is mentioned, that in practice such sale has been regarded as not less absolute in regard to the rights of heirs than to those of the debtor, affords a strong presumption that if the view of the effect of such sale, which has obtained in practice without dispute, be at variance with any principle of the Hindoo law, the principle so infringed has long been obsolete, and suggests a

doubt whether the infringement of it can really have excited discontent. Our courts, I believe, generally hold that property does not, by passing to heirs, escape from its liens and liabilities, and this principle seems incompatible with that above-mentioned.

3. Another objection to the sale of land for the recovery of revenue balances or private debts is urged on the ground that the practice did not exist under former Governments. This objection implies little more than that such legal forms of proceeding were unknown under Native Governments. It will not, I imagine, be asserted that Native Governments did not oust defaulting zemindars, or that in their dealings with them they treated the rights of property with more respect or tenderness than we do. As regards private claims of a civil or complaints of a criminal nature, they did not usually concern themselves much; and the general insecurity of life and property before the introduction of the British rule is notorious. Sir W. Sleeman, I think, relates that long ago some merchants travelling through the Gwalior Territory, who had been plundered, applied for redress to the local authority, who informed them in reply that it was his business to collect his master's revenue, not to attend to their complaints. He did not mean that they had made a mistake in addressing themselves to him instead of some other officer specially charged with the administration of criminal justice, for he united in himself, according to the approved theory of the present day, all the various functions of Government. But he was [in other respects, besides this union of governmental functions, which some conceive to be a source of strength, and I venture to think a source of confusion and weakness] an embodiment and a representative of the Oriental idea of Government, of which the scheme includes only a partial, casual, capricious and precarious dispensation of justice, and makes no pretension to a regular comprehensive system for that purpose. The Oriental scheme resolving itself in the main practically into "the good old rule and simple plan that they should take who have the power, and they should keep who can", is by no means disagreeable to a semi-barbarous people who prefer license to liberty, and reckon protection from wrong to be dearly purchased by the loss of the power of wrong-doing. Even in the eyes of some educated persons the simplicity of barbarism has found more favour than the complicated machinery of civilization, which must be owned to be cumbrous, tardy and costly. The late Mr. C. T. Lebas denounced the legal action for debt, arguing that a man who lent money to another did so of his own accord and at his own risk, and was not entitled to claim the interference of the constituted organs of society to save him from the consequences of his own want of caution. This argument being equally relevant to all voluntary transactions between man and man undermines the whole administration of civil justice. The Gwalior official might analogously have vindicated his rejection of the merchants' complaints, and pointed out to them that their journey had been undertaken without any compulsion, and with a knowledge of the dangers of the road. In spite of such sophistry, it may be maintained that it is a duty and a legitimate

function of a Government to support right against might, to compel the fulfilment of contracts, and to punish outrage of all kinds. Much weight therefore cannot be attatched to the objection which I have been considering, namely, that the compulsory sale of landed property is not in accordance with former custom, unless it can be shown that the practice is unjust or unnecessary for the ends of justice.

4. The equity of the process cannot plausibly be impugned. If a man fail in the performance of an agreement to pay a sum of money in repayment of a loan or otherwise on a fixed date, the law cannot be condemned for assigning to the creditor, or selling in his behalf, any property of the debtor which may be forthcoming of the value due, or may fetch that amount in the market, but would be chargeable with iniquity if it refused to do so. There is nothing in the nature of immovable property which renders it less fit than movable property to be applied to the purpose of liquidating debt. Nor is any special hypothecation required to make property generally liable to be applied to that purpose, although such hypothecation may give to a particular creditor a primary lien on particular property. The exemption of one sort of property from this liability confers a peculiar privilege on the owners of that sort of property, which, like all class privileges, is obnoxious as contrary to the spirit of equal justice. But this is not the only mischief arising from the exemption of immovable property from the liability. The exemption seriously impairs the efficiency of the administration of civil justice. A procedure which provides no other means than the sale of movable property for the execution of money decrees is ridiculously inadequate, and a mere mockery of justice; and in this view of the subject the interests of justice are strongly opposed to the exemption. Nor does the exemption favour the poorer classes. One would be more disposed to interpose between the creditor and the wretch whose bed and cooking vessels were distrained for debt than in behalf of the debtor who, possessing in his landed estate a permanent source of income, evaded the claims of his creditors.

5. The sale of land under revenue processes or decrees of the civil courts equally involves the principle of the responsibility of landed property for debt; but land may be held to be constructively hypothecated for the revenue with which it is assessed; and on this account the public creditor may claim a preference over private creditors. Further than this a distinction in favour of the public creditor cannot fairly be drawn; and those who object to the sale of land under judicial decrees cannot consistently advocate the sale of land for revenue arrears. The prohibition of sales of the former kind will, moreover, appear to be futile unless sales of the latter kind be also prohibited.

6. The frequent sales of land for debt are owing in part to the unthriftiness and improvidence of the land-owners, and mainly to the operation of a law of equal succession in the repeated sub-division of landed estates in connection with a fixed land-tax. To exonerate the land from responsibility for revenue demands would be a measure fraught

with so much public inconvenience that it can hardly be contemplated; to refuse sales or sequestrations under money decrees, and so cancel the best and only adequate security for their realization, which is in effect something like a repudiation or confiscation of the rights of money-lenders, seems to be thought a less objectionable measure; but it is important to observe that neither measure would directly neutralize or diminish the influence of the causes above-mentioned of the impoverishment of the landed proprietors. The roots of the evil which it is desired to eradicate would be left untouched.

7. There can be like doubt that the loan made to the land-owner by the Native banker, which is followed by the civil suit and the sale of the debtor's estate in execution of the judgment, is commonly made to meet the urgent and inexorable demand of the Collector; and one effect of preventing the judicial sale in the last resort on the private creditor's account may be to precipitate the summary sale on the account of the public creditor.

8. It may be assumed, too, that money-lenders, deprived of the security for debt afforded by land, and exposed more than ever to the contingency of bad debts, will be forced, in self-defence, to exact a higher rate of interest on loans advanced by them; and as landholders will be tempted by the same circumstance to contract debts more readily and to evade the payment of them, the result is likely to be an increased growth of dishonesty and embarrassment.

9. Unless the interests of land-owners are to be preferred to the prosperity of estates, the transfer of estates from impoverished and inefficient landlords by sale to persons possessed of larger means and resources appears expedient, even though the purchasers should belong to the mercantile classes. Such persons being generally thrifty and provident by habit, accustomed to take account of every penny and to turn every penny to account, if they acquired a perfect title and a permanent interest in the property purchased by them, it cannot be supposed with probability that they would be inclined to rack-rent or in any way deteriorate the estates, and convert into a source of loss what they had designed as a profitable investment.

10. The withdrawal of land from the processes of the civil courts, with the view of screening landholders from the consequences of debt, seems like an insane attempt to frustrate that order of things which has prescribed that honest industry and thoughtful prudence shall prevail in the world over recklessness and indolence, by the detrimental means of restricting the free play, the spontaneous movements, the legitimate application of capital in a field so wide and fruitful as that of landed property.

11. But it is urged that the "extensive transfer of property, by means of public sales from the hands of the old landed proprietors to those of persons possessing no local influence, proved a source of weakness" to us in the late disturbances, by "arraying against us many persons exercising influence over the tenantry of extensive estates, of

which not long before they were the hereditary proprietors; while, on the other hand", the interlopers "being regarded with dislike by the tenantry, look to us for protection in time of difficulty, and are unable to render us any assistance, or actively to co-operate with the Government authorities in the suppression of disturbance".

12. The fact is undeniable that many ex-proprietors took advantage of the recent anarchy to recover by force the rights which they had lost by legal proceedings, and by so doing committed themselves to the cause of the rebellion; and it is analogous to another fact not less patent that convicts availed themselves of the same opportunity to break gaol, and scoundrels all over the country to perpetrate all kinds of outrages; but the one fact is no better reason for relaxing the laws relating to debt than the other is for relaxing the laws relating to crime. Ruined men and debtors, as well as criminals, have everywhere, in every age, been the enemies of Government, and though folly and misfortune are not to be confounded with guilt, the former class of persons cannot complain of being coupled with the latter if they acted in concert with them.

13. I shall not call in question "the peculiar attachment of the landed proprietors to their hereditary estates, and of the tenantry to their hereditary landlords"; but it is obvious that the strength which the agricultural communities derive from their mutual attachment may be exerted either for or against the cause of order; it is a two-edged weapon which cuts both ways, and had better perhaps be blunted altogether than kept sharp on the chance of its being drawn on our side in time of need, and at the risk of its being drawn for our destruction. If we do not find that the influence and authority of the zemindars are earnestly employed in quiet times in co-operation with our police for the suppression of crime, I see not why we should expect it to be otherwise in times of general disorder.

14. Perhaps it may even admit of a doubt whether the extensive transfers which are imagined to have weakened our hands in the late troubles did not, in point of fact, prevent a more thorough combination of the landed proprietors against us.

15. It could not reasonably be anticipated that the sort of feudal feeling existing between the classes connected with the soil would yield at once to the operation of the practice now deprecated; such an effect could only be gradually produced in a long term of years under the shadow of a strong government; but the beneficial character of the ultimate issue was not doubtful in the eye of reason, and the policy now suggested of fostering the feudal feeling, bolstering a proprietary that have not virtue enough to save themselves, or to be worth saving, and excluding from that proprietary, as far as possible, other classes of society who might infuse new blood and spirit into it, seems not less suicidal in a political, than hurtful in an economical, point of view.

16. There is surely nothing which shocks the moral sense in the proposition that landed property should be answerable for the engagement

of those who enjoy its profits, and if a practice, founded in equity, is held to have generated political disaffection in the North-Western Provinces of Bengal, the loyal behaviour of the landholders in the Lower Provinces, in which the same practice obtains, may warn us to beware of mistaking the cause of the alleged disaffection. If, however, we turn to a province in which this practice has never been introduced, and enquire whether in the Saugor and Nerbudda Territories the landed proprietors are on that account more prosperous or more contented, or have shown themselves more faithful in the discharge of their duties than their brethren in the North-Western Provinces, I apprehend that the answer to that enquiry cannot be returned in the affirmative.

17. Having said so much on the general question of the justice and expediency of proceedings against landed property for the recovery of debt, I now turn to the propositions contained in the 7th paragraph of the despatch of the Secretary of State for India. It is proposed to limit the jurisdiction of the Moonsiffs' courts to suits for money or other personal property, and to provide that no process, either for attachment or sale of real property, shall be allowed in cases below a fixed amount, and that in suits exceeding that amount the Moonsiffs shall not be competent to issue such a process without the previous sanction of the Judge.

18. Entertaining the views which I have already expressed, I cannot advise steps of a retrograde nature such as are proposed, nor can I regard the increased number of sales of land which have taken place under decrees of civil courts since the promulgation of Regulation XXIII. of 1814 as a good and sufficient reason for reverting to the rules which were in force before that year. The definition of the jurisdiction of the courts by the pecuniary value of the suits cognizable by them appears preferable to one having reference to the nature of the suits, nor can I discern anything in the nature of a suit for land which calls for a special tribunal or procedure. Were suits relating to land taken out of the Moonsiffs' courts and transferred to the higher courts, and the jurisdiction of the Moonsiffs in respect of suits for money or other personal property enlarged, the result would not necessarily be a smaller number of sales of land, except under the checks proposed to be applied to the processes of the Moonsiffs' courts in the execution of money decrees. As to the provision that no process for attachment or sale of real property should issue in cases below a fixed amount, I observe that it would operate in favour of large creditors and to the injury of small ones, and that I discover no ground in equity for such a distinction. This provision seems to have originated in a notion that recourse is often had to the process of selling real estate when the decree might have been satisfied by some other process, but I conceive that such an event may always be prevented by the judgment-debtor. Touching the other provision, that in cases above the fixed amount aforesaid the Moonsiffs shall not be competent to issue a process for the attachment or sale of real property without the Judge's sanction, I remark that if the object of the reference be to enable the Judge to

determine whether the Moonsiff's decision is a just and correct one, the effect of it will be to bring every case of the kind under review, and to make two decisions necessary instead of one, thereby rendering the first superfluous: and that if the Judge is not required to go into the merits of the Moonsiff's decision, but only to determine the best mode of executing it, the principles by which the Judge is to be guided in determining that point might as well be prescribed for the guidance of the Moonsiff. The execution of a decree is in a great measure a merely ministerial, not to say mechanical, act; the strictly judicial function of the court has been completed when the decision has been pronounced; in the execution of the judgment the court is but the instrument by which the law acts. Nothing appears to me more undesirable than to throw obstacles in the way of the execution of decrees, and such interposition of obstacles seems to be the very object of the provision which makes the execution, or the mode of execution, of the decrees dependent on the action and on the opinion of another court than that which granted the decree. Delay is inevitable under the terms of the provision, and the decree-holder would be in doubt as to whether his decree was of any value or none. Decrees are worthless that cannot be executed, and their value is diminished in proportion as the difficulty of execution is augmented. A provision, therefore, which is designed to impede or defeat the execution of decrees is fatal to the credit and efficiency of the judicial administration.

19. If the action at law for debt or the processes against landed property in execution of money decrees, without which the former is ineffectual, are believed to breed disaffection, or disorganize society, let them be abolished, and let our courts be closed; and, accepting all the logical consequences involved in such a course, let us acknowledge that civilization is a delusion; and let the Government, abnegating its judicial functions, confine its attention in future to the preservation of peace and the collection of revenue. But if a sound, pure, and efficient dispensation of justice is the greatest blessing which a Government can bestow on its subjects; if even such an imperfect and unimmaculate dispensation of it as we are able under the disadvantage of our circumstances to confer on India is still beyond all price, and that which chiefly makes our position in this country useful and justifiable, then let us not attempt to conciliate the spirit of barbarism by surrendering any of the valuable and distinctive parts of our civility, because they are naturally antagonistic to it, nor fear that the paths of justice will conduct us to political ruin.

From F. B. PEARSON, *Esq., Officiating Judge, Cawnpore, dated the 27th April* 1859.

REFERRING to letter No. 1 of the 6th instant to the address of Mr. Batten, which has been made over to me as unanswered on my assumption of the Judge's office, I observe that, as I have already expressed my sentiments on the subject to which it relates when recently officiating

as Judge of the Saugor and Nerbudda Territories, it is unnecessary for me to submit a second reply in detail concerning it. Having since had opportunities of discussing some of the points in question with persons who entertain views opposed to those which I have avowed, I find that some of them who deprecate the sale of land under judicial decrees would still hold land liable to sale for revenue arrears; and that others who would not allow landed property to be sold in satisfaction of decrees of the civil courts would yet permit temporary alienations of such property, or the sequestration of estates, for that purpose. In my former letter to you, dated from Jubbulpore on the 14th instant, I remarked upon the inconsistency of bringing land to sale in behalf of the public creditor, and refusing the same measure of justice to the private creditor; and I would add that the objection urged against the *sale* of land appears to me to be equally applicable, if applicable at all, to any temporary alienation of land of a compulsory nature, or to its sequestration for debt in the shape of a revenue balance, or in any other shape; and I cannot understand how any one can think it right to eject a man from his estate, and convey it, or the profits of it, over to another party for a period of ten or fifteen years, but wrong to make the transfer complete and perpetual. The former method is often not only an inadequate one, as it renders the execution of a money decree a slow, gradual, contingent affair, but extremely troublesome, if it involves the necessity of kham management, and not conducive to the prosperity of the estates which are surrendered to persons invested with only a limited and temporary interest in them: whereas the sale process at once discharges the claims of the judgment-creditors, and bestows a permanent proprietary title on the auction purchasers. Those who object to compulsory transfers of landed property, by sale or otherwise, either for the realization of revenue balances or judicial awards, ought, in consistency, to advocate the prohibition of private and voluntary transfers; for the latter cause similar changes in the occupancy of land often arise out of like occasions, that is to say, are necessitated by the demands of the Collector and of the money-lender; and the only difference between the two kinds of cases is that in the latter the debtor of his own accord complies with the requisitions of equity, while in the former the law steps in to compel him to observe, if he would evade, them.

2. Some gentlemen in high quarters, I understand, strongly object to the acquisition of landed property by the mercantile classes, but the objection seems so wholly untenable on any grounds of reason that it is almost superfluous to contend that those classes cannot fairly be excluded from purchasing such property, and I have intimated in my former letter that they cannot be supposed to buy such property with a view to its deterioration.

3. I beg pardon for troubling the Government with these additional remarks, and request that this may be attached as a supplement to my former letter above-mentioned.

From William Wynyard, *Esq., Judge of Shahjehanpore, dated Camp Budaon, Judge's Office, the* 22*nd April* 1859.

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2. The sale of land in execution of decrees of court is one of the most unpopular acts committed by British officers, and has no doubt proved an element of weakness, though I doubt much whether we received more aid from villages where there were no auction purchasers than from those where there were. As a political institution, the talookdaree system is certainly far better than the biswadaree, though I do not think it just that settlement should be made with the talookdar with no protection for the biswadar. I believe that we have received little or no real assistance from biswadars—village proprietors; they have had quite enough to do to look after themselves.

3. There may be some cases when the purchaser, finding himself on a bed of thorns, may be glad to relinquish his purchase in favour of the ejected proprietor. There is in the ordinary course no difficulty in the effecting such a re-transfer, but I think the district officer should be very careful what encouragement and assistance he gives to such parties, and his interference in such cases should be carefully watched.

4. Unless we are prepared to forbid the sale of land for arrears of revenue, I do not see with what justice we can forbid it for a debt. The evils of the purchasing system are very great. In my present sessions I see that in most of the cases when blood has been spilt during the rebellion the quarrel has originated in the sale of the land. Still what are you to do if you do not sell? Is mortgage sufficient to ensure the punctual payment, without oppression, insisted upon by our revenue system? I think not. If the land is the property of the zemindars, they ought to be allowed to sell it, and it ought to be liable to sale for their debts.

5. You may as well attempt to prevent a Native landholder getting into debt as you could an Irish landlord eighty years ago. They will spend money at their marriages and feasts, and the bunnyas will be paid their advances.

6. I would let no land be sold for a decree of less amount than Rs. 250 or Rs. 300 without the previous sanction of the Judge. I have already in a letter addressed to the Secretary of the Government of the Central Provinces stated that I would alter the constitution of the civil courts. I would insist in the attendance of both parties in court, and would simplify the whole working of what is now a complicated and expensive machine, much worked by rogues to the detriment of honest men.

7. I do not see the advantage of reverting to the system under which Moonsiffs' courts were tribunals for the adjudication only of money and other personal property. I would limit their powers of selling, not their powers of deciding cases.

From James Lean, *Esq., Judge of Mirzapore, dated Mirzapore, the* 28*th April* 1859.

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2. It is proposed by the home authorities to restore, as far as possibly can be done by compromise, induced by the influence of the local executive officers, old proprietors to landed estates which have passed from their hands in execution of decrees of civil courts, and also to check the sale of landed estates for the future, by allowing no Moonsiff to decide a case regarding them, or to execute by the sale of them any decree he may pass for money or other personal property below a certain amount under any circumstances, or any decree he may pass in such description of suit exceeding that amount, without the previous sanction of the Judge. The grounds of this proposal are, *first*, that the absolute sale of an hereditary estate under Hindoo law is illegal; *second*, that such alienations are, on political grounds, inexpedient.

3. The law of the Mitakshara is as described in the correspondence, viz., the alienation by a father of joint ancestral landed property without the consent of the sons, except on proof of necessity, is illegal. It is also true that cases are seldom filed by the heirs of a debtor for the recovery of landed property sold in execution of a decree, on the ground that only the rights and interests of the debtor had been sold, and those only involved a life-interest. But the reason of this is that the sales almost universally take place in execution of decrees founded on obligations incurred on account of necessity, or, at any rate, supposed necessity, viz., the want of money for the celebration of marriages, the performance of funeral rites, the going on pilgrimages, the payment of family debts, and, in fact, for the general wants of a joint undivided family, and occasionally (though I believe now but very rarely) for the making good the Government revenue. Such being the case, the asserted anomaly of the courts in practice selling, as appertaining to an individual, that which cannot be sold by that individual, does not exist. I would here note that if it did, it would under the same law exist equally in regard to estates acquired by a member of a joint undivided family with the funds of that family, and alive on the occurrence of the sale, and to those enjoyed by any member of such family in succession to an ancestor. On these considerations I think the argument founded on illegality is invalid.

4. I proceed to offer a few remarks on the argument founded on political expediency. It will be allowed by most that the system of allowing the sale of landed property in execution of decrees, on the ground of the improvement of that property by capitalists, and on the ground of facilitating generally the employment of capital, by providing a substantial security for its employment, is theoretically sound. It is true that it does not exist in the Native States, and for the best of all reasons that there is no record of rights facilitating transfers, and that if there were such records, there are no courts for decreeing such

transfers; and if there were such courts, they would not have the power of affecting them—nay, I have been long enough in India to recollect when our own courts had in various instances not the power in executing their decrees, nor the revenue authorities in the realization of the Government demand. Doubtless the Rajpoots and Brahmins and other such clans preferred, and would prefer, that state of things in our own territories as they do at present in the Native States. One reads of the people in Scotland, not "sixty years ago", preventing by force a purchaser from taking possession; and one occasionally even now reads of the occurrence of such outrages, and of worse of the same nature in Ireland, and the same motives actuated in both these countries as actuate the Rajpoot and others in this country. But surely the general improvement of the land and the general circulation of capital are greater objects than the meeting the unreasonable wishes of these Rajpoots and others, and should be so regarded in Hindoostan as they have been in Scotland and Ireland. Of a certainty in these days of railways and electric telegraphs, and other such social improvements, we are not to be content to perpetuate a state of things, to the injury of the many, for the gratification of the few. Granting then that the system is sound in theory, have we the power to carry it out? I think we have. I doubt much if there is the general preference of old zemindars to new capitalist proprietors, which there is asserted to be. No revolution like that through which we have just passed can be without its malcontents, who will attempt to avail themselves of it in reviving their obsolete claims. Accordingly in many places such appeared; but if their claims had met with the general success it is asserted they did. I doubt if the roads passing through the estates in which they were preferred could have been travelled by Englishmen immediately after our military successes with the impunity they were; or, in fact, that the general pacification of the country would have so immediately followed those successes. Even now, and for a long time to come, such malcontents exist and will exist, and the transition state in which the country, emerging from a comparative state of barbarism to one of civilization, is, and will be for a long time to come, nothing else is to be expected; but the existence of such malcontents as just said has not been of much political importance, neither do I think it will be so henceforward; or, at any rate, if it has been of any political importance, will gradually cease to be with the lapse of time. Again, in the Nerbudda Territories, where alienations of land never take place in execution of decrees or in realization of Government revenue, rebellion was rife; and yet in Bengal Proper, where the courts of justice are daily causing alienations of land in execution of their decrees, and sales in realization of balances are constantly occurring, it was almost unknown. If then there be any truth in all this, we can carry out the system—nay, the system itself had little influence on the late political difficulties.

5. After what I have written it is almost superfluous for me to remark that I do not recommend any alteration of the Moonsiffs' powers as to their hearing suits relating to landed property, or as to executing

decrees passed in such or any other suits, and that *á fortiori* I would not recommend any attempts to be made to restore the old zemindars who have been ousted in execution of such decrees. Such attempts, indeed, if made, would only succeed by the auction purchasers entertaining the fear that such interference on the part of the local executive authorities would, by the encouragement it would give to the old proprietors to thwart them in the management of their estates, lead to their being unable to hold and manage them. I need scarcely call to recollection the evils in the shape of depreciation of property and the like, consequent on the enactment of Regulation I. of 1821 which was passed to remedy a state of things somewhat similar, as far as the old proprietors of land are concerned, to that which it is proposed now to remedy. I would here also note that one of the great asserted objections to the sale of landed property in execution of decrees, viz., the introduction of a stranger into the village community on the sale of a share, is practically remedied by the right of pre-emption on the part of a co-sharer, which is often claimed and universally allowed. I would note also that the late law under which redemption of mortgage takes place on the payment of the principal of the mortgage money after the expiration of the term of mortgage, usufruct being enjoyed during that term in place of interest, will much simplify such transactions in themselves and the adjudication on them; and that there will not be the same difficulty that at present exists in obtaining possession in redeeming, or, on such possession being refused, in obtaining it by application to the courts. I would remark also that if the sub-division of property, consequent on the law of the Mitakshara, lead to poverty, and that poverty lead to alienation of landed property, there may be a very good reason for altering the law by statutory enactment (not that I would recommend such alteration), but no reason for diminishing the value of such property by preventing its absolute alienation.

6. But further granting that it be expedient to check the future alienation of land, and with a view to so doing to alter the powers of the Moonsiffs in regard to land, I do not recommend the alteration of those powers suggested. If I altered them at all, I would not only take from the Moonsiffs the power of adjudicating originally regarding land, but would not allow any decree passed by them for money or other personal property to be executed, except on application made by the decree-holder to the Judge, *i. e.*, I would not complicate matters by making the Moonsiff apply for a sanction, which, if given on a *boná fide* investigation, would involve the same trouble as the original reception of the application, and which in practice would probably lead to a merely nominal investigation; in other words, I would throw on the Judge the entire responsibility of such investigation from the commencement to the end. I confess though I do not see what principle is to guide the Judge under any system of procedure in admitting or rejecting the application for sale, unless it be the permitting a sale of any landed property other than that inherited from ancestors, or acquired by joint funds—and that does not seem from the correspondence to be its object—

for if it were it would, I suppose, be distinctly laid down, and be proposed to be attained in the execution of all decrees of every grade of court, and affecting not only Hindoos, but all classes of the community. I confess, too, that I do not understand the principle under which a sale of land shall not be allowed in execution of decrees below a certain amount, and yet be allowed in the execution of decrees exceeding that amount.

7. Such is my opinion on this important subject, which I have given with all freedom, and yet with all deference to the high authority with which I venture to differ.

From HENRY VANSITTART, Esq., *Judge of Bareilly, dated Bareilly, the 9th May* 1859.

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2. If it is the law that real property shall be sold by order of the civil courts in satisfaction of decrees,* it comes pretty much to the same thing whether the order for sale be given by the subordinate court or by the Judge. The intrigues to entangle the small landholder will be none the fewer, simply because the Judge must administer the law, whatever that may be. The decrees are in the Western Provinces generally for small amounts, and primarily will be given by the lower court.

* For debts.

3. The broader policy of declaring that lands shall not be sold in satisfaction of decrees would momentarily raise the rate of interest, but would satisfy the country. Yet what rate of interest can be higher than the current charge of 36 and 60 per cent. often demanded by the cunning money-lender of the landholder, who again is more often thrown into debt by the action of our revenue system than by any improvidence of his own.

4. Much of the mischief that has been done is due to the revenue system with which the civil courts have no concern. But the hatred to our system that has declared itself may partly be traced to the theoretical application of an European method of civil jurisprudence to a country that is semi-civilized.

5. Experience having shown the failure, I would reverse it, and would from this day limit the action of the civil court, take away a power which in the hands of our Native Judges is often political, and I would declare that henceforward no lands paying revenue to Government shall be saleable by decree of civil courts in satisfaction of debts.

From T. C. PLOWDEN, Esq., *Judge of Ghazeepore, dated Ghazeepore, the 10th May* 1859.

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2. I am of opinion that the evils complained of will not be in the slightest degree alleviated by any alteration of the existing constitution

of Moonsiffs' courts, or by reverting to the system in these courts in operation before 1831. The effect of such a course would only be to overburden the superior courts, the Principal Sudder Ameens and Judges with duties which are just as well done by Moonsiffs, and in the performance of which they have not abused their powers. For there would be no diminution of suits of the value cognizable by Moonsiff, while the loss of the facilities afforded for twenty-eight years to the public by these courts would be severely felt. Nor do I think that the check suggested to be applied to processes of attachment and sale issued by Moonsiffs would be of any use even if the distinction proposed as to value were good and just in principle, which I must doubt, for in practice the required sanction would soon become a mere form, as was formerly the case when Moonsiffs had to obtain, through the Judge, the sanction of the Revenue Commissioner for sales of land.

3. It is not in the proceedings of the civil courts, but in a reform of our land revenue system, that, as it appears to me, we must seek a remedy for this progressive evil of sub-divisions, or rather separations, of landed property, and its unrestricted transfer. The Hindoo law of succession is not the exclusive source of these evils, nor the sole cause, even with the facilities afforded by our courts, of the decay of old and formerly wealthy families, and of the large landed proprietors. It ought not to be forgotten that at the last settlement we ourselves dispossessed in many instances the owners of large estates or talooks of their right of settlement and management, and by making the settlement with the village moquddums, and acknowledging the village community as proprietors, we broke up and dismembered such properties more effectually than the Hindoo law of succession to whatever degree this may have been assisted by our courts of law. Co-parcenary tenures were thus summarily *created* in all these estates, and the principle of sub-division, and with it that of separate liability for the revenue, introduced and extended. As a natural consequence the putteedaree register of individual rights and liabilities followed. The same plan and register were adopted in the cases of large and ancient talooks held by a community deriving from a common ancestor under a co-parcenary tenure. It is this register which, in my opinion, is the first and chief moving cause of that process of disintegration and transfer which is now going on so extensively. Unity, cohesion and combination are the essential features of a co-parcenary tenure. So long as these subsist, internal sub-division of rights and occupancies is in no way injurious to the people or dangerous to the estate. The danger is in the separation of the component parts.

4. Before the last settlement it was difficult, almost impossible, for a co-parcener to obtain the separation of his share. It was no easy matter for him to prove a pedigree extending over many generations against the wishes of his brethren (who ordinarily opposed it), and without such proofs he could not legally obtain a separation. But the putteedaree papers, by indicating each fractional share, have completely removed this difficulty, and a co-parcener has now only to produce the

necessary extract from this register to obtain his desire, and it is the same with sales. When undefined rights were sold, it was impossible for a purchaser to find these when opposed, as he was certain to be, by an united community, and until he found them and proved them, he could not get possession. Buyers conseqeutly were scarce. But now he buys a defined right, according to the putteedaree, and his first step is to apply for a partition.

5. This putteedaree register, as far as my observation goes, is, as a general rule, inaccurate. Its *annual* preparation opens a door for frauds which are of constant occurrence, and the check on these which formerly existed in the *village* putwaree, ordinarily an hereditary officer, bound to the community by ancient ties which made him an impartial witness in their disputes, has been entirely removed by the hulkabundee system—an innovation most unpalatable to the people, and, in my opinion, fraught with danger to their interests. If may be easily imagined therefore by those conversant with our courts how inaccurate and fraudulent registers first promote litigation, and then facilitate the transfer of the property particularly to strangers.

6. Even where the register is correct, inducements to separate are not wanting among the community itself. A quarrel or a desire of independence supply motives which are further stimulated by cupidity, for Regulation IX. of 1811, the law under which partitions in co-parcenary estates are effected, permits the Collector to *re-adjust the assessment*, and the hope or even chance of a reduction is not uncommonly a moving cause for separations.

7. In these observations I have been influenced by no prejudice or bias, for I have myself been a Settlement Officer. They are the results of what has been daily passing before my eyes for the eight years that I have held the office of Judge. It is my firm opinion that this putteedareé register in its details of fractional interests is more than a mistake—it is a positive wrong. Together with the principle of separate liability, to secure which it was established, it is opposed to the principles of unity, cohesion and combination, which are the essence of a co-parcenary tenure, and to that ancient system of internal administration, founded on a common liability, which was suited to the genius of the people, and under which they kept their properties intact and amongst themselves, and secure from the intrusion of strangers.

8. A striking instance of this is shown in the case of Pergunnah Luknesur in this district. This pergunnah, comprising some hundred villages, is held under a co-parcenary tenure by a community of Singhur Rajpoots. They pay to Government an annual revenue of Rs. 20,000, defraying at the same time the expenses of its collection by the payment of a suzawul and his establishment. These people, in spite of repeated efforts, have to this day steadily and successfully resisted the preparation of village papers. They have no putteedaree register, and their individual rights are utterly unknown in the Collector's office. Yet the revenue is punctually paid, their property is intact; no stranger has

ever been able to get a footing there, there is no litigation, and a singular freedom for crime. The annals of the civil and criminal courts leave no room for doubt on these points. And when the day of trouble came, these people were conspicuous for their loyalty and vigour. Powerful in number, and strong in union, they successfully organised measures to protect both their suzawuls and themselves, and to resist disorder, and throughout paid the Government revenue with punctuality. In difficulties they assist one another by mortgage or temporary assignments of their holdings.

9. This case at least suggests the expediency of an enquiry into the working of this part of our revenue system. There can be no danger to the revenue by adopting the principle of a common liability, and if the proprietary right was registered in the names of the representative elders, without any declaration of individual fractional interests, there would be at once a great check to separations and transfers.

10. In order to check the sub-division of large talooks held by a single proprietor, and its subsequent transfer, bit by bit, under the operation of the causes set forth in the 2nd paragraph of the despatch No. 4, I would suggest the conferring titles upon the owner. By the Hindoo law the estate of a Rajah is exempt from sub-division, and as this law is also neutralised by family usage, I would also confer the title in such cases, which would be an inducement to its more general adoption.

11. In conclusion, I would beg to offer a few remarks on the suggestion in the 4th paragraph of the despatch No. 4. I view with apprehension the permission given to the district revenue officers to encourage and assist the restoration of landed property to their former owners by the auction purchasers of an estate who are desirous of coming to some arrangement for the cancelment of the purchase. I dread the action of Government in such a matter, because I am convinced the motive will be misunderstood, much individual injury and no little corruption will result, and the credit of Government suffer in consequence. What need is there of the interference of a Government official in a business matter between man and man, and if both parties are really desirous of an arrangement, is it to be imagined that they are incapable of conducting it to a successful issue if left to themselves? If they are not *equally* desirous, if the desire should be on the side of the deprived *owner only*, it is easy to foresee that the interference of Government would effect this desire, however averse the auction purchaser might be, for, as according to the Native idea, Government officials only act in order to carry out Government views, it would be at once assumed that the Government desire, the restoration of the old proprietor. On the expression, therefore, of the slightest wish, the auction purchaser, especially if he be a man of wealth and respectability, will at once assent, and ostensibly with pleasure, though at heart unwilling to part with a good bargain. No sooner will this order be known, and it will quickly spread, then active intrigue will be set afoot

among the Native officials. To stir up the old proprietor, and to frighten the new, will be to open out fresh sources of profit, and even of honor and advancement, for the more parties he can get to agree (ostensibly will be sufficient) the greater will be his credit with his superior and the greater his reward. I cannot better illustrate the danger of Government interference in the concerns of private individuals than by pointing to the proceedings of the revenue officials in the matter of the village school cess. In their orders on this subject the Government insisted that the agreement to contribute should be free and voluntary. I have no hesitation in declaring that in this district at least the levy has been compulsory; that the cess is viewed with extreme repugnance and dislike, and only submitted to from helplessness; and that when the disturbances broke out in 1857, it went far to confirm the rumours of a conversion of its subjects to Christianity as being contemplated by Government. Instances have been mentioned to me of men being sent in as criminals (chullaned) because they refused to execute the agreement. Yet the European officials and the Government were led to believe that the cess was voluntarily and even cheerfully paid, the former relying upon the rotton foundation of the reports of their Native officers. Our Government will never succeed in any of its plans for ameliorating and improving the condition of the people until some trustworthy means are found of arriving at a correct knowledge of their sentiments in the various measures introduced. They do not know us, nor we them—what matter of surprise therefore is it that our plans so often fail of effect. For these reasons I deprecate the interference of Government in any way in transactions of the nature alluded to.

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From A. Ross, *Esq., Judge of Furruckabad, dated Furruckabad, the 14th May* 1859.

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2. The existence of the evil complained of, viz., the rapid and constant changes in the proprietorship of land, and the concomitant decay of old and influential families, with the consequent loss to the State in times of commotion of the weight and influence of those classes on the side of order, cannot be denied. The usual process which leads to such results is accurately sketched in the 2nd paragraph of Lord Stanley's letter.

3. But in considering the fact from a political point of view, the real questions to be answered are, 1*stly*—Can the evil be checked or avoided? and, 2*ndly*—If the evil is unavoidable, is it unmixed with good? and which preponderates? and if the former, how can the evil be remedied?

4. The solution of these questions is undoubtedly beset with difficulties, and so many persons of intelligence and experience have

expressed themselves strongly as to the magnitude of the evil complained of, and the necessity of immediate and remedial measures, that it is with diffidence I venture to express an opinion somewhat at variance with what I may call the popular opinion on these points.

5. My own opinion is that under a strong Government, such as the British Government in India, administering regular and impartial laws to all classes alike, and a revenue system conducted on fixed principles, the evil complained of, that is, the rapid and constant transfer of proprietary rights in land, is *unavoidable,* except by a system of *rigid* entail hitherto unknown, which would diminish immensely the value of land, and impede incalculably the general progress of society.

6. It may be very true that under the law of Mitakshara, quoted by the home authorities, the alienation of ancestral landed property by a father without the consent of his sons, *except on proof* of *necessity,* is forbidden; but practically, as far as I can learn, this law offers no impediment to the sale of land as debt which cannot be otherwise satisfied, the single cause of such sales is universally held to constitute such necessity; and accordingly in cases where a landed proprietor is hopelessly involved, I have never heard the sale of his land, either by private bargain or by the officers of Government, in execution of a decree questioned on the score of illegality under the Hindoo law.

7. Assuming then a restrictive law, such as that of Mitakshara, to be practically inoperative, it appears to me that the frequent transfers of rights in landed property are the necessary consequence of the gradual impoverishment of old families under the operation of the law of equal succession, accelerated by the ignorance, unthriftiness, and family and caste pride of the agricultural classes.

8. Of the remaining questions the first is easily answered. The evil, whatever may be the estimate formed of it, is assuredly not an unmixed one. Whatever stress may be laid on the disastrous consequences, in a political point of view, to which it gave rise in a time of universal and unprecedented rebellion and unchecked anarchy, there can be no doubt that under a strong and permanent Government no such evil would have been experienced; while the immense advantages to be derived from the gradual substitution of an enterprising and monied class, possessing industry and intelligence, for an impoverished and ignorant class, thus securing the application of capital to the land, should not be lightly valued.

9. Whether the evil or the good resulting from the rapid transfers of rights in land preponderates under a system of administration inevitably pursued by a European nation advanced in civilization must depend on the political position of that nation and its power to secure to its subjects a strong and permanent government.

10. Assuming, however, that the evil, though not unmixed with good, is one which, while it cannot be altogether remedied, it is still desirable, for political reasons, to counteract and ameliorate as much as

possible, it remains to be considered what are the best remedial measures available under existing circumstances.

11. There are those who would get rid of the evil at any sacrifice, even to the extent of rendering land altogether unsaleable in satisfaction of debt, and they support their views by reference to the state of things existing under Native rule—past and present. The remedies on which opinions are invited by the Secretary of State for India do not include this one. It is therefore superfluous to discuss it. I need only remark that no fair parallel can be drawn between a society living under the protection of a strong Government, and enjoying the blessings of an impartial administration of equal laws, and one in which land had no market value, and the bold and proud Thakoor disdained to pay either revenue or debt, except under the compulsion of an armed force. It would be scarcely more unreasonable favourably to contrast the present times in England in which land is constantly changing hands with those in which the best title to land were a strong arm and a sharp sword, and when even the State did not scruple to replenish its exhausted coffers by plundering and torturing the Jews.

12. But while it may be conceded that the total prohibition of land sales in satisfaction of debt by the officers of Government is neither desirable nor possible, there cannot be a doubt that the great facilities for such sales created by our judicial system have given rise to many abuses which ought to be and can be corrected by the adoption of certain restrictions as safe-guards against the fraud and chicanery of the monied classes, the practice of which it is much to be feared have too often caused the ruin of the simple and uneducated land-owner, who but for such frauds would have been able to meet his liabilities.

13. Natives of every class with whom I have conversed on the subject, with the exception of the present proprietor himself, whose objections invariably resolve themselves, in one form or other, into a desire both to have his cake and eat it, while they admit the many evils attending the present system of forced sales of land, deprecate any law entirely prohibiting the sale of land in satisfaction of debt. They justly argue that such a law would only have the effect of completely destroying the power of the poor land-owner to obtain relief by even temporary loans for agricultural purposes, and thus of hastening, all the more rapidily, the fate it is desired to avert, by bringing his estate under the Collector's hammer.

14. But all admit that much may be done to protect the ignorant and illiterate land-owner against the rapacity of the cunning and unscrupulous money-lender, as well as to secure to the former in the last resort the full value of his property.

15. Before proceeding to suggest a few of the palliative measures which it may be possible to adopt with these objects, I beg to offer a few remarks on those suggested for consideration by Her Majesty's Secretary of State for India.

16. That suggested in the 4th paragraph of Lord Stanley's letter, having for its object the amicable restoration, in all cases where it may be possible, of the old proprietor to his ancestral estate, I cannot but regard as, except in rare cases, impracticable. Notwithstanding the rough handling which auction purchasers and other new men so universally received during the rebellion, they have clung (at least as far as my experience goes) with the utmost tenacity to a position which under the British rule is so much coveted by all classes of the Native community; and even were it otherwise, and their recent sufferings should have disposed some purchasers to entertain favourably the suggestion to relinquish their newly acquired rights in favour of the old ejected proprietors, the latter are not likely, considering their past history, to be in a position to offer terms which would be accepted by those who have supplanted them. As a general rule, then, I think that it may be assumed that the evils connected with the compulsory transfer of land, as far as they affect *past* transactions, are irremediable.

17. In regard to the future, however, the case is different, and I am of opinion that without putting undue restrictions on the ready transfer of real property, measures might without difficulty be devised for obviating most of the evils at present found to arise from the unrestricted sale of land.

18. One of the evils which presses most heavily on the improvident and ignorant peasant proprietor is the facility with which forgery can be practised to his detriment, and it may be ruin, by the unscrupulous money-lender. A forged bond, or deed of sale, judgment and execution, can be, and I feel convinced are, frequently resorted to with success; the disproof of a claim so supported being always difficult, and in many cases impossible. A simple remedy for this evil would be a law requiring the registry, in a registry office to be established for the purpose, in each tehseelee of all instruments affecting the property of land-owners, and declaring all such instruments which have not been registered invalid.

19. The measure suggested in the 7th paragraph of the Secretary of State's letter might also be adopted with advantage. A limit of Rs. 100, below which no process for attachment or sale of real property should be allowed, would at once sweep away the class of cases to which most suspicion is attached.

20. The right of pre-emption rested in the co-parceners of a joint undivided estate is a safe-guard which is already provided by the existing law, though of course it cannot be taken advantage of except where one or more of the members of a joint proprietary body have by the accumulation of a little capital proved themselves superior to the rest of their brethren in prudence and thrift. Further facilities might, I think, be provided for protecting and enforcing this right.

21. Another great defect in the working of the present law is the confusion leading to interminable litigation which arises from the

sale in execution of decrees of rights and interests in land without specification of their value and extent. The practice of selling rights and interests without specification is attended with the double evil of rendering beneficial possession of such rights and interests on the part of the purchaser, in many cases impossible of attainment, without protracted and intricate litigation, and at the same time inflicting on the person whose rights are sold the loss arising from the deterioration in their market value caused by their being thus undefined. A law entitling each proprietor of a share in an undivided property to have his rights and interests defined by a competent court before they are brought to the hammer would, by securing to him the full value of his property, save him from loss and great practical injustice.

22. It only remains to offer a few remarks on the suggestions thrown out in the 6th and 7th paragraphs of the Secretary of State's letter. The restriction of the power of Moonsiffs within the limits prescribed by the state of the law previous to 1831, while it would greatly impede business by occupying the time of zillah Judges in a description of work which can be equally well performed by the subordinate courts, would, on the other hand, in my opinion, have no effect whatever in removing any of the evils it is desired to remedy. The action of the civil courts, it must be remembered, is regulated by a strict law of procedure, and is not dependent either in the particular matter under discussion, or indeed in any matters relating to process, on the judgment or personal character of the Judges who preside in them, except of course in those comparatively rare cases in which the Judge acts directly and flagrantly in collusion with an influential suitor. As the law exists, no Judge, whatever be his grade, has it in his power to refuse an application to put into effect any of the processes for execution authorized by law. If it be considered desirable to place some check on the sale of rights and interests in land in execution of decrees, it should be done by legislative enactment specially protective of this description of property, and not simply by opposing the obstruction of increased trouble and expense to the operation of the ordinary legal processes. The Moonsiffs as a class possess, I think, both judgment and honesty sufficient for the adjudication of this description of claims, and any error committed by them can be as readily rectified in appeal as in any other class of cases. I am therefore decidedly opposed to any limitation of the Moonsiffs' powers, except of course those dependent on the amount of the suits tried by them.

No. 33 (Judicial), dated India Office, London, the 4th August 1859.

From—Her Majesty's SECRETARY OF STATE for India.

To—His Excellency the Right Honourable the GOVERNOR GENERAL of India in Council.

I OBSERVE from the proceedings of the Legislative Council of India that the subject of the sales of land in execution of decrees of the civil courts was brought before the Council on the 5th March last by

Mr. Ricketts, who then proposed that the Council should, through their Clerk, circulate certain questions to the subordinate Governments with the view of obtaining further information in the matter, but withdrew his motion on the 19th of the same month.

2. Your attention was specially called to the subject by Lord Stanley's Judicial despatch No. 4 of the 25th January 1859, and it appears to Her Majesty's Government that if further information was required from the subordinate Governments, the requisition should have been made by the Executive Government within whose province it falls, rather than that of the Legislative Council, to conduct the necessary enquiries preparatory to legislation, especially on matters of great public importance.

3. Her Majesty's Government trust that, notwithstanding the termination for the present of proceedings in the Legislative Council, the subject of the sale of real property in execution of decrees of court will receive further consideration at the hands of Your Lordship in Council.

No. 227, dated Lahore, the 18th February 1870.

From—T. H. THORNTON, Esq., D. C. L., Secretary to the Government of the Punjab.

To—The Secretary to the Government of India, Home Dept.

I AM desired by the Honourable the Lieutenant-Governor to forward, for submission to His Excellency the Viceroy and Governor General in Council, copies of the papers marginally noted relating to the sale of hereditary or joint acquired property in land in execution of decrees of court.

No. 1550, dated 10th May 1869, from Registrar, Chief Court, Punjab, with accompanying Minutes by the Judges.
No. 678, dated 22nd May 1869, from Secretary to Government, Punjab, to Secretary to Financial Commissioner.
No. 874, dated 4th November 1869, from Secretary to Financial Commissioner.
No. 1652, dated 26th November 1869, from Secretary to Government, Punjab, to Registrar, Chief Court.
No. 292, dated 31st January 1870, from Registrar, Chief Court, Punjab, with acompanying Minutes by the Judges.

2. I am to observe that as one of the Judges of the Chief Court, the Financial Commissioner of the Punjab, and the High Court, North-Western Provinces, are opposed to the prohibition of sales of land by law, it is hardly to be expected that Supreme Government will agree to legislate in that sense; but as the Lieutenant-Governor is strongly convinced of the great dislike of the bulk of the people at the present time to the compulsory sale of hereditary land, and also of the danger likely to result in times of trouble from a resort to the practice, he has thought it right to direct the submission of these papers; and if entire prohibition be not deemed expedient, His Honor trusts that some more stringent rules to guard against the abuse of the power of sale may be laid down than those contained in Sections 243 and 244 of Act VIII. of 1859.

No. 1550, dated the 10th May 1869.

From—T. W. Smyth, Esq., Registrar, Chief Court, Punjab.

To—The Secretary to the Government of the Punjab.

I am directed to forward, for the consideration and orders of Government, two separate Minutes recorded by the Judges of the Chief Court on the subject of the sale of hereditary or joint acquired property in land in execution of the decrees of civil courts.

2. Section 205 of Act VIII. of 1859, which declares that all property whatever, movable or immovable, shall be liable to attachment and sale in execution of a decree in the Punjab, subject to the following proviso: "Provided that no immovable property shall be sold without the sanction of the Commissioner of the Division, and in the case of hereditary or joint acquired property in land, without the previous sanction of the Chief Court".

3. Neither Judicial Commissioner's circular No. 103 of 30th October 1858, on which this proviso was founded, nor the Notification No. 1225, dated 26th September 1866, declaring Section 205 of the Code of Civil Procedure subject to this proviso, laid down any principles for the guidance of the Court in according or withholding sanction; and at present the Court's action is confined to enforcing on the part of Deputy Commissioners a compliance with the provisions of Section 244 of Act VIII. of 1859.

4. Deputy Commissioners as Collectors are bound to enforce the provisions of this section of the Code without referring to the Chief Court. The application for sanction has therefore almost become an empty form, the check illusory, and the procedure objectionable as being calculated to convey the impression that the Chief Court exercises a control over these sales which, in point of fact, it does not possess.

5. The Judges, for the reasons stated in their Minutes, are in favour of the prohibition of sales of land in execution of decrees, unless under certain special circumstances; and if His Honor is of the same opinion, the Court submits that the question should be laid before the Government of India, in order that some substantial check upon these sales should be afforded by legislative enactment. Should His Honor, however, be of a different opinion, his decision is requested on the question whether a continuance of these references to the Chief Court is necessary or desirable.

6. In the event of its being decided to allow the matter to remain as it is, the Court proposes to alter the form of statement in which these references are submitted.

Minute by Mr. Justice Boulnois,—*dated the* 29*th March* 1869.

The sale of the khewut of a khewutdar belonging to a village community cannot be a simple transaction. It either becomes the occasion of introducing a stranger, with doubt and disputes as to the nature

that stranger's accessory rights in the common property of the lage,, and involves depreciation of the interest sold, or else it is a call on the proprietory body to attend courts, to obtain pre-emption, with the inconvenience and loss to them that may result.

Moreover, the sale affords an extraordinary facility to the money-der who has become the creditor of two or three members of the lage community for getting the entire village into his hands—a facility ich is not a fair result of the employment of capital, but is an ad-ntage obtained from the peculiar constitution of the proprietory bodies. may be doubted whether upon these sales the decree-holder does not t more by the sale than he is fairly entitled to, and whether third rties are not unduly prejudiced.

For some such reasons as these the general liability of the land-lder to have his land sold in satisfaction of his debts, declared in ect by Section 205 of the Code of Civil Procedure, has been held be unsuited to this Province. But the machinery which has been ovided for preventing the ill effects of that liability is defective.

The provisions of Section 205 of the Code have not been allowed operate in the Punjab by a clause in the notification of Government ted 29th September 1866, issued in conformity with Section 387 of e Code, which introduces a proviso to the following effect:

"Provided that no immovable property shall be sold without e previous sanction of the Commissioner of the Division, and in the se of hereditary or joint acquired property in land, without the evious sanction of the Chief Court."

This plan of referring to the Chief Court for sanction appears at st sight to leave the whole question open as to the general principle which sanction should be given; and it is evident that it might, on e one hand, be construed to authorize the Chief Court to withhold rmission in all but the most exceptional cases, or, on the other, be held compel the Court to grant it in almost all cases where the debt is nâ fide and no means of effecting its liquidation present themselves. tween these two extremes there is this wide range for discretion; but is discretion is a judicial one, and must be exercised on certain neral grounds, and governed by the course which judicial officers have ken during past years. The object then of this paper is to lead either the substitution of a better guarantee against the injurious effects of e application of Section 205, or to greater precision in the grounds on hich the Chief Court's sanction is granted or refused. From papers the office of the Chief Court it appears that this subject has been uch discussed during the past ten years.

In 1858 the Judicial Commissioner, Mr. Thornton, in his letter o. 461, dated 28th September, submitted to the Chief Commissioner rtain proposals for effecting improvements and reforms in the law and ocedure of the civil courts of the Punjab; and in paragraph 14 of his inute Mr. Thornton stated, in regard to the liability of land to attach-ent and sale in execution of decrees given in the civil courts, that to

impose limits on credit and free bargain and sale is as a general rule unfavourable to the interests of a commercial community. In India, he said, the commercial and agricultural classes are felt to be more or less in a position of antagonism, and the latter is frequently deprived of his patrimony to clear off debts thoughtlessly incurred to the merchant. In some districts in North-Western Provinces landed property has entirely changed hands under our rule. Although in the Punjab the sale of land in execution of a civil decree occurs more rarely than in many other districts of India, still it is felt that too many facilities are afforded to the monied classes to buy the landowner out of his birthright. The bankers might with advantage be deprived of their power to force alienation of hereditary possession in payment of debts which could easily be liquidated by instalments. Mr. Thornton accordingly proposed, with the view of throwing greater obstacles in the way of the compulsory alienation of the above kind of property, that the sanction of the Judicial Commissioner be required before hereditary or joint acquired property in land could be sold in execution of a civil decree.

Mr. Thornton, while recommending this restriction, observed that he was not prepared to advise that the sale of hereditary land be altogether prohibited, as it would be undesirable to deprive the money-lender of all power of recovery from the hereditary possessions of his debtor; but he thought the above restriction might be introduced with advantage.

On this subject the Chief Commissioner remarked in his letter No. 335, dated 22nd October 1858, forwarding Mr. Thornton's proposals for the sanction of the Government of India that the distinction between hereditary and acquired land was well understood by the Natives. The necessity of obtaining the Judicial Commissioner's sanction would, in his opinion, render officers very cautious in resorting to the measure of selling hereditary land. But though placing such sale under severe restrictions, the Chief Commissioner would not abolish it altogether. The knowledge that as a last resort it may be put in force would render landholders careful in the management of their affairs. The Chief Commissioner requested (No. 788, dated 22nd October 1868) the Judicial Commissioner not to permit any sale of hereditary land without his (the Judicial Commissioner's) sanction.

Thereupon circular order No. 103, dated 30th October 1858, was issued, directing that no hereditary or joint acquired property in land should be sold in liquidation of a sum decreed in the civil courts without the sanction of the Judicial Commissioner.

In a letter from Mr. Secretary Simson, to Mr. Davies, No. 585, dated 30th January 1859, it was declared that the Governor General was of opinion that the reason assigned in the above correspondence for restricting the sale of hereditary land was not a very logical one. If, while the restrictions proposed did not exist in the Punjab, and also in North-Western Provinces, where land was then habitually sold in execution of a decree, landholders had been proverbially reckless in money

itters, His Excellency did not see why it should be expected that ere the process was hedged about by many precautions, and the sale land in execution of a decree would be a rare occurrence, the landlders should become more careful or be even less careless than they ght have been formerly. Still it appeared to the Governor General t the move was in the right direction, and he sanctioned it. t he suggested that possibly, in cases where a decree could not be euted by other measures and sale of land should be proposed, it ght be sometimes advisable to lease the land of the judgment-debtor favourable terms, and appropriate the proceeds realized over and above Government revenue to the gradual liquidation of the debt.

Thus the circular order No. 103 of 30th October 1868, by the ration of the Indian Councils Act, 1861, Section 48, obtained the force law, and ancestral land in the Punjab, instead of being generally le as it was under Section 205 of the Code of Civil Procedure for cution of decrees for money, was not so liable without the sanction of Judicial Commissioner.

In 1859 Colonel Lake, Commissioner of the Jullundhur Division, ed certain objections to the system that was then established, which thought to be an illusory and cumbersome mode of delaying sales, le not in reality protecting the class for whose protection it was igned. This opinion, however, was not formed without regard to a which at that time prohibited the extension of the period of paynt of instalments during a longer space than two years.

But it sufficiently appears in Colonel Lake's letters on this subject his opinion was rather in favour of the unrestricted sale of ancestral s where the intention of the borrower, shown by his acts or by some mentary evidence, was to let them be looked to as a security by the litor. He wrote as follows in his No. 81, dated 5th April 1859:

"Officers, on one hand, are directed to discourage in every possible the sale of real property; on the other hand, the payment of a ee by instalments, we are told, is not to extend beyond a period of years. Particular attention was directed to this point in your nt circular No. 80, dated Lahore, 21st September 1858.

"If, on the other hand, activity is shown in enforcing the decrees ur courts, and parties are compelled to pay up within the limit wed by authority, there is no alternative but to bring real property sale, and these cases must be very numerous,—many suits having forced into court in 1857 under the modification of the statute of itation.

"It appears to me that three courses are open to us in dealing with class of cases, and that we have adopted the one most open to ction.

"One course was to prohibit the sale of real property except in idation of registered bonds, or such other exceptional cases where court was satisfied that a just demand was contumaciously withheld,

and to legalize the transfer of land for a term of years in satisfaction of a decree of court.

"Secondly, it was open to us to extend the period of instalments from two years to six; and in the correspondence marginally noted, which passed between your predecessor and myself, this procedure was sanctioned in special cases. It might, in my opinion, be advantageously extended to all decrees based upon entries in account books unsupported by bonds.

My letter No. 4, dated 5th January 1867; your letter No. 110, dated 12th idem.

"The third course we have adopted is only to sell land after a very protracted enquiry, which adds to the costs of the suit, violates the principles we have laid down regarding the punctual payment of decrees, and really benefits no one. If in the ten cases referred to you for orders there are *bonâ fide* grounds for sale, the debtors will not be benefited by any delay which takes place, while creditors will be harassed, and much additional work is thrown upon your office and mine as well as upon the district courts."

Mr. Thornton wrote thus in answer (No. 2953, dated 27th June 1859) to Colonel Lake:

"The rule you object to has been approved by the Governor General. I subjoin extract paragraph 5 from letter No. 5857 of the 20th January last, from the Under Secretary to address of Secretary to Government of the Punjab, which contains the Governor General's orders on the subject. You will observe that His Excellency approves of the proposition, not because he is satisfied with its sufficiency, but merely as being in the right direction. He is evidently willing to go further in withholding sanction to sale. He desires, moreover, that in administering the rule we should endeavour to introduce temporary transfers in place of the severer measure of absolute sale. I propose to revert to this injunction presently when disposing of the cases awaiting orders.

"Having given the authority for the new rule, I now notice one advantage it has produced. It has brought to light the fact that sales are applied for by few Commissioners except yourself. I have had two cases I believe from the Cis-Sutlej, one from Umritsur, one from Mooltan, and one from Hissar, during the eight months the rule has been in force. From your division, however, ten applications, as above stated, and the whole of these are from Hoshyarpore.

"These facts are supported by others contained in paragraph 130 of my last year's civil report, where it is shown that out of 93 sales that took place in 31 districts in the year 1858, 36 were in the Trans-Sutlej Division, and out of these 26 were in Hoshyarpore.

"Two questions seem naturally to arise from the observation of these figures. Does any injury to agricultural or monetary interests ensue in the Punjab generally from this general disinclination of the courts to resort to sale? and if the reply be that no such evil is apparent, the next enquiry is whether the frequent sales in the Trans-Sutlej States are really necessary?

"Should you be able to point out any proof that the former of these questions should be answered in the affirmative, I shall be much obliged to you to do so. I do not see them myself, nor can I think of any argument for these sales in Hoshyarpore that do not apply equally to other fertile and prosperous parts of the Province. I therefore take up the cases with a strong inclination to avoid sale, and to act on the injunction of the Governor General as far as possible."

No alteration in the practice established by circular order No. 105 of 1859 followed upon this correspondence, and the subject seems to have been dropped.

On the 4th of November 1859 the Government of India ordered that the principles declared in the Code (Act VIII. of 1859) should be followed as an authoritative guide wherever the law of procedure in the Punjab was silent.

Act VIII. of 1859 authorizes two courses besides sale, viz., by Section 243 a manager may be appointed and the profits applied to the liquidation of the decree, or the land may be mortgaged or let on lease and the amount thus raised. By Section 244 the land may be temporarily alienated for a *reasonable period,* on security being given. But this alienation can be authorized only upon the representation of the Deputy Commissioner in his capacity of revenue officer on security for the amount of the decree or for the value of the land being given.

The maximum period is not fixed, and it is discretionally with the revenue authorities to make or not to make this arrangement. Thus this restriction evidently falls short of that which circular order No. 103 of 1858 introduced.

In 1863 Colonel Lake (No. 99, dated 25th March 1863) enquired the limit of time for which lands might be transferred under this system, and the Judicial Commissioner (Mr. Cust) replied (No. 1065, dated 31st March 1863) "that the period of transfer should be a 'reasonable' period, leaving much discretion to the court; but he added it may be ruled safely that on the analogy of the practice of the revenue courts the period should not exceed fifteen years".

The orders of the 4th November 1859 had no effect to supersede the rule declared in circular order No. 103 of 1858, and matters remained practically where they were until 1866. In that year the Code of Civil Procedure was extended to the Punjab, with this proviso in the Government notification dated 25th September 1866: "Provided that no immovable property shall be sold without the previous sanction of the Commissioner of the Division, and in the case of hereditary or joint-acquired property in land, without the previous sanction of the Chief Court."

In 1867 the Financial Commissioner, on a reference from, and at the request of, the Chief Court, directed that, previous to applying for sanction to sell ancestral or joint-acquired land (as directed in Judicial Commissioner's circular No. 103 of 1858), or other interests in land, Deputy Commissioners should satisfy themselves that there was no objection to

the sale, and where the sale was objectionable, try and effect a temporary alienation, or some other arrangement that would satisfy the parties and obviate sale.

The Chief Court, on 30th January 1868, issued detailed instructions (Book Circular III. of 1868) as to the procedure to be observed in applying for sanction to sell, and in conducting the sale of land in execution of decree; the rules were based on Act VIII. of 1859.

Here the matter ends, and the question on what principle the sanction to be given by the Chief Court is to be refused or granted remains as far as ever from solution.

In the Central Provinces the following rule has been laid down: "The consideration in such a case (*i. e.*, where application is made by a decree-holder for the sale of a debtor's land) is simply this—Is the account of the debt so large with reference to the property of the debtor that it is hopeless to look for the debt ever being liquidated by any temporary alienation of the profits arising from the property or by any other means whatever?" (Book circular of the Judicial Commissioner of the Central Provinces III. of 1865.)

A guide of some kind is suggested in the letter of the Commissioner of Jullundur, Colonel Lake, to the Judicial Commissioner in 1859, where he adverts to the propriety of making a distinction as regards the sanction of sales where the debtor has shown his intention to hold out his land as security for the loan.

And here an anomaly may be noticed. In legislating on the subject of mortgages, the Government has protected the debtor against his creditor, and does not sanction in any case the involuntary transfer of immoveable property in satisfaction of a debt without the intervention of a judicial officer, who is bound by certain rules, and is obliged to see that the year of grace has been allowed. But in the case of a simple debt there is a reference to a judicial officer, who in many cases (as it appears from the course adopted in the Central Provinces) only satisfies himself that the other assets are insufficient. A reference which, if this is the right mode of complying with it, appears to me altogether illusory. My own opinion is in favour of the plan of absolutely refusing to permit land in a zemindaree or bhayachara village to be sold in execution of a decree for money, unless it has been mortgaged to the decreeholder. If mortgaged, the land would be sold subject to the rules on that head in regard to the certainty of the interest mortgaged.

Lastly, reference should be made to the average number of applications in the sale of ancestral lands. No special register has been kept up in the Office of the Judicial Commissioner of applications for sanction to the sale of ancestral or joint-acquired property in land in execution of decrees under the provisions of circular No. 103 of 1858, and the number of yearly applications is not actually known. But from a list* prepared in the Office of the Chief Court it appears that, between the 30th March 1868 and the 30th March 1869, 60 applications for the sale of ancestral

* Annexure.

or joint-acquired property in land were made to this Court; of this number 21 sales have been sanctioned, 15 have been refused, 7 applications have been returned for further enquiry, and 17 are still under consideration. I think the whole matter should be reported to the Government.

Division.	District.	Number of applications.
Delhi	Delhi	
	Goorgaon	6
	Kurnal	7
Hissar	Hissar	2
	Rohtuck	
	Sirsa	
Amballa	Amballa	
	Loodiana	2
	Simla	
Jullundur	Jullundhur	2
	Hoshyarpore	1
	Kangra	
Amritsur	Amritsur	1
	Goordaspore	4
	Sealkote	
Lahore	Lahore	5
	Goojranwalla	3
	Ferozepore	1
Rawul Pindee	Rawul Pindee	
	Shahpore	12
	Jhelum	
	Goojerat	1
Mooltan	Mooltan	4
	Jhung	1
	Moozuffergurh	4
Derajat	Dera Ghazee Khan	4
	Total	60

Minute by Mr. Justice Simson.

By circular order, Judicial Commissioner, No. 103, dated 30th October 1858, issued with the approval of the Government of India, and therefore having the force of law by the Indian Councils Act, and the operation of which is preserved by a provision in the notification of

Government dated 26th September 1866 (No. 1225), extending Act VIII. of 1859 to this Province, no hereditary or joint-acquired property in land can be sold in execution of decree without the previous sanction of the Chief Court.

I have never had much satisfaction in discharging my duty in connection with these references, owing to the undefined nature of the power of withholding sanction which the Chief Court possesses, and the widely different opinions which prevail among competent officers in regard to the propriety of imposing any restrictions at all on these sales, and as to the extent of the restriction, if any, which it is proper to impose.

An objection made by a Deputy Commissioner to an order of mine, made in discouragement of one of these sales, led me to examine more closely into the extent of the powers conferred on the court in this matter, and the result was that I came to the conclusion that they at all events did not exceed those which are now possessed by the civil court and Collector elsewhere under Sections 243 and 244, Act VIII. of 1859.

My learned colleague having now expressed his views on the whole question in a Minute dated the 29th March, I proceed to place mine upon record also.

On the question whether hereditary land, the property of village communities, should be liable to sale in execution of decree, my own opinion is in favour of the entire prohibition of such forced sales.

The evils which arose from them in the North-Western Provinces before any restriction was placed upon them are universally acknowledged, and the legislature recognized their existence by providing the partial remedy afforded in Sections 243-44 of Act VIII. of 1859.

On the other hand, the objections which exist to the entire prohibition of these sales is, in my opinion, more apparent and theoretical than real and practical in the present state of the landed and commercial interests in the country.

Looking at the relative positions of the zemindar and money-lender in the present state of society in this Province under our system of administration, I think there cannot be a doubt that the former requires protection in some degree against the liabilities which are gradually heaped upon him by the accounts artfully made up and the ruinous interest charged by the latter.

Moreover, I do not think that the credit of the zemindars would be materially affected by the prohibition of these sales; such sales were unknown under the Native rule, and still the zemindars had as little difficulty in obtaining whatever money they required as they have now.

And in so far as the prohibition would have the effect of limiting the zemindar's credit, I think that the limitation would be beneficial. It might impose some check on their reckless and unnecessary expenditure on marriages and the like.

It might also decrease their facilities for obtaining money to pay obligations incurred to Government on account of the undue pressure of the Government revenue; but the remedy for this would be a reduction of the Government jumma—a duty which the Government fully recognizes. The Government has no desire to drive a zemindar to the money-lender, and eventually sell him up; and the interests of both are served by the discovery of excessive assessments at the earliest possible period.

On the other hand, if it were objected that the prohibition would put a hindrance in the way of a zemindar obtaining the means of improving his estate, I would reply that in practice sales of land are generally not occasioned by debts incurred for such a purpose.

Moreover, if money were borrowed for improvements, and the zemindar failed to repay it, I think the mortgage of the improved land would always afford ample means for the satisfaction of the debt, as zemindars are sufficiently shrewed to avoid the expenditure of money on improvements without a certainty of their being remunerative. And in point of fact the zemindars do not lay out much money on improvements at present. The Government also gives them tucavee advances for this purpose. In short, the prohibition of these sales would not injure the credit of the zemindars, in my opinion, to any appreciable extent.

The state of society in this Province and the relative positions of the zemindars and money-lender are very different to what they are in England; and however objectionable any interference with the power of entire freedom of contract in money matters might be in England, such interference as I propose, slight as its effect in limiting credit practically would be, would prove, in my opinion, to be rather beneficial than injurious.

My learned colleague sympathizes with these opinions to a great extent, but he would not allow the prohibition to extend to mortgages. Now, as far as the other members of the village community are concerned, the evils which arise from the forced sale of mortgaged land differ in no degree whatever, as far as I can see, from those caused by other forced sales; and it is the injury done to the interests of the village community generally, and not to the borrower himself, which chiefly influences me in this matter, and appears to me deserving of weight.

So far as the borrower himself is concerned, the mortgage of his land under such a state of the law would certainly have the effect of prominently bringing to his notice the liability of his land to sale in the event of his failing to pay the debts secured by the mortgage; and the restriction proposed by my colleague would undoubtedly afford additional protection to him; but the village community, it appears to me, would obtain no additional security thereby; and chiefly these, and not the debtor himself, appear to me to require and deserve our protection.

But the Chief Court is not at liberty, as it seems to me, to act on the private opinions which the Judges may entertain on this subject.

They are bound by the rule laid down in the circular and notification above referred to.

Now, according to the letter of the rule, the discretion of the Judges to disallow these sales is unlimited.

The words are—" Provided that no immovable property shall be sold without the previous sanction of the Commissioner of the division, and in the case of hereditary or joint-acquired property in land, without the previous sanction of the Chief Court".

And if a Judge were to refuse to sanction every one of these sales, his orders would be covered by the express words of the circular order and notification.

But the mere fact of these references being made to the court, makes it abundantly clear that such a course was never intended, and that whatever restriction it was intended to place upon these sales, the restriction was something short of prohibiting them altogether; therefore the intention of Government and the rule must be sought for elsewhere than in the letter of the notification and circular order.

Were the principles on which the highest court of a province grants or refuses sanction to such sales a settled question, there could be no doubt that the intention of the rule was that the Chief Court should act according to them.

But unfortunately at the time when the Government order embodied in the circular order of the 30th October 1858 was issued, this authority was exercised by no other court in the country, nor had it heretofore been exercised by the Judicial Commissioner himself. It was a creation of the order in question.

Again, the opinions of particular Judges afford little assistance in the matter, as on no question do the ablest of our judicial officers differ more completely—the differences ranging between the entire prohibition of these sales and the absence of any restriction on them.

In my opinion, therefore, for the purpose of ascertaining the scope of the authority vested in the Chief Court, we must consider the precise objects which Government had in view in creating this new function for the Judicial Commissioner, and the principles upon which it has been exercised by successive Judicial Commissioners up to this date.

In other words, I think the Judges of the Chief Court now are bound, in exercising the discretion vested in them by the rule regarding these sales, to conform to the precedents created during the eight years for which the authority was exercised by the Judicial Commissioner, in so far at least as they are found to be in accordance with the object for which Government was asked to grant the authority in question, and did in point of fact grant it.

The records of this Office afford sufficient evidence on both points. The correspondence has been set forth in considerable detail in the Minute of my learned colleague, as was necessary for the purpose of

giving a connected view of the action of the Government and the Judicial Commissioner in the matter.

But it is unnecessary for me to go over the same ground again, and I shall only refer to such portions of the correspondence as I think serves to illustrate the object of my enquiry.

It appears then that this authority was granted by Government at the instance of Mr. Judicial Commissioner Thornton; and in his letter to the Secretary of the Punjab Government No. 461, dated 28th September 1858, after admitting that to impose restrictions on the liability of land to attachment and sale in execution of decree was ordinarily objectionable, he goes on to say that—"Still it is felt that too many facilities are afforded to the monied class to buy the landowner out of his birthright. The bankers might with advantage be deprived of their powers to force alienation of hereditary possessions on payment of debts *which could easily be liquidated by instalments*".

Thereafter we find the Commissioner of Jullundur, in paragraph 2 of a letter No. 81, dated 5th April 1859, *inter alia*, raising the question over what time the instalments should be allowed to run, and assuming that it was not to exceed two years, the extreme limit allowed for an instalment decree by the law of the Punjab as it then stood.

In the course of the Judicial Commissioner's reply to that letter in his No. 2953, dated 27th June 1859, paragraph 4, he further expresses his intention "in administering the rule * * * * to introduce temporary transfers in place of the severer measure of absolute sale", in accordance with the wishes of the Governor General.

This eventually led to another reference from the Commissioner, Jullundur, in his letter No. 99, dated the 25th March 1863, to Mr. Judicial Commissioner Thornton's successor, as to the limit of time beyond which land should not be transferred under this procedure.

To which question the Judicial Commissioner replied that the period should be a "reasonable" one, but not exceeding fifteen years; the former proviso being taken from Section 244, Act VIII. of 1859, and the latter from the analogy of the practice of the revenue courts in the case of farms to a stranger for default.

From these extracts it would appear that the Judicial Commissioner, when applying for the powers which he received, contemplated their application to cases in which the debt for which the property was attached "could easily be liquidated by instalments", and that the extreme limit of these instalments was afterwards interpreted by the Commissioner of Jullundur, without objection on the part of the Judicial Commissioner, to be two years.

It also appears that, consequent on the expression of the wishes of the Governor General, he extended the scope of his action under the rule by endeavouring to arrange for the liquidation of the debt by

the temporary transfer of the land, and that the limit of those temporary transfers was afterwards ruled by his successor to be "reasonable", but not to exceed fifteen years.

From this I conclude that the principle on which the Judicial Commissioner administered the rule passed by Government was to sanction these sales, unless when the debt for which the land was attached could be liquidated by instalments extending over two years, or by the temporary transfer of the land for a "reasonable" period, which was not to exceed fifteen years.

I now turn to the provisions of Act VIII. of 1859 bearing on this subject.

By Section 194 a civil court may, for sufficient reason, make the amount of any decree payable by instalments.

By Section 243, when the property attached consists of land, a civil court may appoint a manager to realize the rents, and apply the profits to the liquidation of the decree, or it may postpone the sale for such period as it may think proper to enable the judgment-debtor to raise the amount by the mortgage of the land, or letting it on lease, or by disposing by private sale of a portion of the land, *if the judgment-debtor can satisfy the court that there is reasonable ground to believe that the amount can be so raised.*

By Section 244, on a representation from the Collector that the sale of the land is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land, a civil court may authorize the Collector to make provision for such satisfaction in the manner proposed on security being given for amount of the decree or for the value of the land.

The maximum period over which the instalments may run is not fixed; it must be "a reasonable" period; but we may safely assume that in cases in which land is attached, a reasonable period would generally exceed two years—the maximum term of an instalment decree under the former law of the Punjab.

From this it appears to me that the powers which the court may exercise to restrain these sales do not exceed those conferred upon civil courts and Collectors by Act VIII. of 1859; and that the proviso of the Government notification dated 25th September 1866 referring to these sales, in so far as it is supposed to give additional authority to the Chief Court, is nugatory, except to this extent—that it enables the Chief Court to satisfy itself previous to the sales that the provisions of Act VIII. of 1859 above cited have been fully complied with in each case.

A power of control of this kind, so far as it goes, is beneficial, and it is not provided for by Act VIII. of 1859.

But I have reason to believe that the general impression is that the powers of the Chief Court are much more extensive than this, and I fear that hereafter, unless the state of the case be fully explained and

put on record now, the Judges of the Chief Court may be supposed to have failed to discourage and prevent these sales to the extent of their authority, and as contemplated by Government, although our object is to exercise whatever powers we have to the fullest extent.

I am of opinion, therefore, that we should lay the matter before Government, and explain that our powers of preventing these sales, as we understand them, are confined to the right to require the subordinate courts to give full effect to the provisions of Act VIII. of 1859.

If Government can obtain additional powers for the court, I shall be very glad to receive them.

On the other hand, if our powers are to remain as they are, I think the form of statement in which these references come up should be altered and simplified, and a circular order issued, pointing out to the subordinate courts the precise points to which their enquiries should be directed before recommending these sales, and to which we shall enforce attention strictly previous to sanctioning them.

No. 678, dated the 22nd May 1869.

From—T. H. THORNTON, Esq., D. C. L., Secretary to the Government of the Punjab.

To—The Secretary to the Financial Commissioner of the Punjab.

I AM directed to forward, for the information of the Officiating Financial Commissioner, copies of a letter No. 1550, dated 10th instant, from the Registrar, Chief Court, and of its enclosed Minutes by the Judges, regarding the proviso annexed in the Punjab to Section 205 of the Code of Civil Procedure which prohibits the sale in execution of decree of hereditary or joint-acquired land without the previous sanction of the Chief Court, and to request that the opinions of Commissioners may be taken on Mr. Justice Boulnois' suggestion to prohibit absolutely the sale of land in a zemindaree or bhyachara village in execution of decree unless the land was mortgaged. An abstract of the replies of Commissioners should be forwarded for His Honor's information, together with the Financial Commissioner's own opinion.

No. 874, dated the 4th November 1869.

From—J. A. E. MILLER, Esq., Secretary to the Financial Commissioner of the Punjab.

To—The Secretary to the Government of the Punjab.

WITH reference to your letter No. 678, dated 22nd May 1869, I am directed to forward an abstract of the replies of Commissioners, together with the replies themselves in original, and a copy of a memorandum recorded by Mr. Melvill on the subject of the sale of hereditary and joint-acquired land in execution of decree.

The Commissioners of Umballa and Peshawar have not replied to the circular.

Circular memorandum No. 3555, *dated* 16*th June* 1869.—" *Sale of ancestral land in execution of a decree.*"

Lieutenant-Colonel McNeile, Commissioner, Delhi, No. 247, *dated* 10*th August* 1869.—The Commissioner is of opinion that these sales should be prohibited except only in case of decrees for arrears of revenue. This exception would protect the assignee of the Government revenue, who, already placed at a great disadvantage by the present system, would have no hold whatever on defaulting zemindars if deprived of the aid of the civil courts in carrying out the execution of an attachment, or, when necessary, proceeding to the sale of the land on which arrears have accrued. A suggestion to permit the jaghirdar to sell up at once, and so get rid of the double tenure with all its concomitant troubles for ever, has, however, been disallowed, it being held that the Government is legally and morally bound to curtail the jaghirdar's income in proportion to the zemindar's crops; but a further extension of this principle, so as in all cases to deprive the jaghirdar of his remedy against the land, would not be consonant with justice. Under the above proviso the enforced sale of ancestral land in execution of a decree might be prohibited altogether, no difference being made in cases of mortgage. If, however, any such radical change in the law be introduced, full notice should be given beforehand, and all suits in which the cause of action should arise within a year of the passing of the Act should be exempted from its operations, without reference to the time of which they might be instituted in court.

Major McMahon, Deputy Commissioner, Delhi, No. 243, *dated* 2*nd July* 1869.—Major McMahon says it would be expedient, for many years to come, to prohibit the sale of such land in execution of a decree for money, in order to protect the ignorant agricultural classes from the money-lending community. No impediment should, however, be thrown in the way of transfer of land in mortgage, as any interference with the rights of mortgage would be objectionable and injurious to the community at large.

A. H. Benton, Esq., Deputy Commissioner, Goorgaon, No. 249, *dated* 20*th July* 1869.—The Deputy Commissioner is of opinion that there should be almost no restrictions on such sales, but that the year of grace granted in cases of mortgage should be allowed, to enable the debtor to make his own arragements, or the authorities, should he fail to do so. The position of landowners is much altered from what it formerly was, and for the better, and they know it; they know that they are possessed of a valuable property, the loss of which would be their ruin, and they strive against all hardships to maintain it. A general prohibition of such sales would be a retrograde step retarding their material prosperity by lessening their power of borrowing, and checking among them the growth of the virtues of frugality and foresight.

Captain Parsons, Deputy Commissioner, Kurnal, No. 140, *dated* 5*th August* 1869.—Major Parsons thinks it would not be advisable to

prohibit sales of land in execution of decree; it would largely increase the number of mortgages, as the bunniahs would refuse to lend money, except on mortgage, and the sales would scarcely be less frequent than they would be with no restrictions whatever. There would be no advantage in legislative interference between the lenders and borrowers in this respect, and the checks imposed in Sections 243-4 of the Procedure Code are quite sufficient to prevent summary procedure as to sale. The sanction of the Chief Court to sales of land should be dispensed with at once.

Colonel Elliot, Commissioner, Hissar, No. 195, *dated* 25*th June* 1869.—Commissioner is of opinion that the powers conferred under Sections 243-4 of the Civil Procedure Code go far enough for the purpose intended, and there is no need to enhance these powers. If the village communities deserve or need protection by legislative interference in their dealings with money-lenders, so do individual borrowers, and that interference should be exercised in the interests of *both, or not at all.* The position of the zemindars has greatly improved under our rule, and their land, formerly comparatively valueless, and therefore unsaleable, has been rendered safe, valuable, transferable property; it is still steadily increasing in value; every encouragement to thrift is offered them; reductions of assessment are made when necessary, and tuccavee for improvements is freely given when applied for and proved needful; and if they will rush heedlessly into debt, and so imperil their possessions, they have no one to blame but themselves when the crash comes, and they find themselves impoverished and ruined through their own idleness and reckless extravagance. Only in the following cases should there be any prohibition to forced sales: (I) "Where the debt was incurred to meet the Government demand"; (II) "Where the money was borrowed for improvements". The only legitimate assistance and protection we can afford the indebted zemindar is indirect, by closely and constantly watching the condition of villages, and early discovering where distress exists; promptly granting reduction where the assessment pressess heavily, and by extending the limit of time for the repayment of tuccavee, which is generally considered to be inconveniently short.

Lieutenant-Colonel Coxe, Commissioner, Jullundur, No. 200, *dated* 29*th June* 1869.—Commissioner is satisfied that sales of hereditary or jointly-acquired land should be prohibited altogether. The simple and needy zemindar is entirely at the mercy of the usurer who can enter in his books almost any amount he pleases, with little, if any, risk of detection; he is austere, grasping, extortionate, and pitiless; and when in the end he drags his debtor into court, all the advantages are on his side; if the books he produces have been kept according to law, he is almost certain to obtain a decree, which he enforces inexorably, and the ignorant thriftless landholder is turned forth—"bought out of his birthright"—landless and a beggar. True the verdict may be "serves him right", but still some allowance must be made for his ignorance and utter incapacity in money matters; and while this state of things

continues, it is imperative that something should be done to protect him--improvident and extravagant as he often is—from the rapacity of the village Shylock.

Lieutenant-Colonel R. Young, Commissioner, Amritsur, No. 154, *dated* 29*th June* 1869.—Colonel Young says—"To restrain sale without restraining mortgage would be futile, except as regards debts already incurred. Mr. Boulnois' plan would only cause lenders to insist upon receiving land in mortgage as security for loans".

Colonel Cracroft, Commissioner, Lahore, No. 278, *dated* 17*th August* 1869.—Colonel Cracroft is of opinion that no sales of land by decree of court, whether the land be mortgaged or not, should be permitted.

Mr. L. Griffin, Deputy Commissioner, Lahore, No. 429, dated 3rd *August* 1869.—Mr. Lepel Griffin would prohibit entirely the sale of any ancestral real property in execution of a decree, leaving joint-acquired real property and every other description of real property to take care of itself. This prohibition should be general and not confined to bhyachara villages.

Lieutenant-Colonel Farrington, Commissioner, Rawal Pindi, No. 215, *dated* 12*th July* 1869.—The Commissioner is of opinion that the prohibition recommended by Mr. Justice Boulnois should be introduced.

Lieutenant-Colonel Graham, Commissioner, Derajat, No. 117, dated 7*th July* 1869.—Colonel Graham is of opinion that to prohibit absolutely the sale of land in execution of a decree is opposed to the principles of law and justice; but if it is necessary to prohibit such sales, the prohibition should extend to the sale of mortgaged lands. The only justifiable restriction would be to bring into operation Sections 243-4 of Act VIII. of 1859, or to require that when the sale is of immovable property other than land, it should be ascertained that the debtor has no other means of satisfying the decree. In the case of sale of hereditary landed property, the following information should be furnished: I.—"Whether the land is mortgaged to the decree-holder or not." II.—"Who is supposed to have the right of pre-emption." III.—"Whether the village community object to the sale." IV.—"Whether the debt incurred is on a registered bond, or in any way secured by a reference to landed property." V.—"Whether the liquidation of the debt is possible by temporary alienation of the land, or by any other means whatever."

A. Brandreth, Esq., Commissioner, Mooltan, No. 196, dated 28th *August* 1869.—The Commissioner is of opinion that were our inferior Judges sufficiently intelligent to be able to use thr inherent equity jurisdiction of their courts, such sales might be allowed; but taking into consideration their defective education, and the ignorance of the people in regard to our systems of law (which are much too rigid), also that our present revenue arrangements are the cause of the villagers having to borrow at high rates of interests, we are bound not to allow sales of ancestral land till at least either the Subordinate Judges or the people are better educated, and our revenue collections so arranged as not to compel the people to borrow at exorbitant interest. In this portion

of the province mortgages are as great a loss to the landowner as sales; while many money-lenders object to either mortgage or purchase, and like to keep the village so hopelessly in debt that the whole crop only pays part of the year's interest. This was the state of things in Jhelum, and, perhaps, is so still; the people there were mere slaves on their own land, and would have been much better off had the land been sold at once and themselves set free. But so long as we force the debts, and the decisions of our courts are considered so unfair by the community, so long should we not forcibly sell ancestral land through our officers, and incur that ill-feeling so ably described by Sir H. Edwardes in his account of the mutiny.

Memorandum by Mr. R. T. Burney, Officiating Deputy Commissioner, Mooltan.—The Deputy Commissioner considers it most desirable that the zemindar should know that, in the event of his becoming recklessly indebted, his land is liable to be sold; at the same time it is equally desirable that the land should never be sold except in extreme cases. If a rule were passed forbidding the sale of ancestral land, unless it had been mortgaged, there would of a certainty be a great increase in the number of mortgages and far more sales than ever, as money-lenders would refuse to lend except on mortgage, and the zemindar would never be got to understand how he was damaging himself. The present system does not seem to require any amendment; the check now exercised by the Chief Court in regard to such sales should be retained; but, as suggested by Mr. Justice Simson, the form of application might be simplified, and the points on which enquiry is needed be explained in a circular.

Mahomed Sooltan, Extra Assistant Commissioner, Goorgaon.—The opinion of the Extra Assistant Commissioner is that if these sales were absolutely prohibited, it would only interfere unjustly with the rights of creditors, but would entail considerable loss on the community, as well as act injuriously as regards their trading transactions. It is also opposed to local custom and to the Mahomedan law: during the time of the Native governments such sales were always allowed. The Natives generally are aware of the value of land, and strive strenuously to acquire it, as the possession gives them a status and facilitates borrowing; the period of payment by instalments might, however, be extended to six years or upwards, and the court in which the case is heard should be empowered to make such arrangements for the payment as it may deem proper. If the creditor can be satisfied by other means, then these sales should be forbidden; if not, then the land should be sold, leaving the debtor only so much as will enable him to maintain his family. The following modifications might be made in Chief Court circular No. 3 of 1868:

Column 16.—"Particulars showing what steps have been taken to realize the amount of decree." 1.—"Have any measures been taken for payment by instalment." 2.—"Has a manager been appointed for the management of receipts and profits of the land." 3.—"What steps have been taken to farm the land under Section 243 of Act VIII. of 1859." 4.—"What arrangements have been made for temporary alienation of the land under Section 244 of the above Act."

Column 17.—"Why applied for sale, *i. e.*, in case the decree could not be satisfied by any steps stated in column 16."

Column 18.—"Remarks as to the total area of land, the area sold, and that left in possession of the debtor for the maintenance of his family."

Column 19.—"What family the debtor has to support, and has he any other means of subsistence than the land."

Gopal Sahai, Extra Assistant Commissioner, Kurnal.—The Extra Assistant Commissioner would allow sales of ancestral property when the debt has been incurred to meet the Government demands, or for necessary domestic expenses; but when the money had been lent only to foster and encourage reckless extravagance, such sales should not be permitted, the answer in such cases only lending with a view to high interest and the acquisition of the land: regard should always be had to the rights of minors in such property.

Opinion of the Officiating Financial Commissioner.

THE question under consideration is whether ancestral and joint-acquired land shall be protected by the Legislature from sale in execution of a decree of a civil court when the land is in a zemindaree or bhyachara village.

Practically this question would equally affect pattidari villages, so that all the ordinary tenures of land are involved in the discussion.

2. The only reason assigned for the intervention of the Legislature is the ignorance of the zemindars or landowners, and their incapacity to protect themselves from the money-lenders who entangle them with artificially concocted accounts, and then drag them into court to an almost certain doom.

3. It is shown that under the procedure followed in the Punjab since the commencement of British rule there has been no absolute prohibition against the sale of land of the kinds indicated in execution of civil decrees; but that such sales have only been allowed where it was found to be impossible to secure to the creditor his just dues, either by fixing instalments, or by the temporary alienation of the landed property of the debtor, such alienation not exceeding fifteen years.

4. Therefore it may be certainly said that money-lenders have always had the security of the land in view when making loans to landowners.

5. Allusion is made to the fact that the Native governments that preceded us did not allow the sale of land for debt; but I do not think that any argument can be drawn from this fact, because it is notorious that under the Seikh rule—and it was probably no different under that of the Mahomedans—land had positively no appreciable value. The State absorbed the proprietor's rental, and the great object was to retain hands to cultivate the land, which, under such conditions, was not a commodity that the possessors of capital desired to purchase.

6. During British rule a vast change has been brought about. Land in the Punjab is now exceedingly valuable, and it is contended for with a keenness that proves how much it is prized. Kinsmen and brothers seize hold of any pretext, however trivial, to claim a right recorded in the name of another. And to this must be added that, with the increase in the value of their property, a great stride has been made by the agricultural population in intelligence and aptitude to look after its own interests. Prices have increased three and fourfold, and the revenue demand has been lowered. With easier circumstances the landowners have generally throughout the Punjab shaken themselves free of the unbroken burden of debt that previously weighed them down, and their obligations are now commonly isolated and are contracted with the intention of paying them off in a specific time. There can, I think, be no question that both zemindars and money-lenders are more precise in their mutual transactions than they used to be.

7. Seeing, then, that under the system heretofore in force in the Punjab things have fared so well with the landowners, and it may be added with the money-lenders also, it becomes a matter of grave doubt whether any change should be made, more particularly as the change indicated is professedly in a direction which must retard the progress of the people and dwarf their energies.

8. If the pressure of the Government demand were such that the people must incur fatal debt for its payment, or if there were any other cause at work which deprived them of the capacity of keeping well above the world, there might be reason in a legislative enactment for securing to the landowners the possession of their land under all circumstances of impecuniosity. But there are no such causes at work. The agricultural body is in an eminently thriving condition, thoroughly capable, in my opinion, of holding its own with the *Sáhokars*; and I much fear that if the security of the land were swept away, there would be such a contraction of dealings between the classes as could not fail to be hurtful to both. There are circumstances under which landowners must get money accommodation, such as the failure of a harvest, loss of cattle, marriage or funeral expenses. Under present circumstances these loans are for short terms, and are usually repaid. It would certainly be an evil to adopt any measure that would curtail the credit of the proprietors of land.

9. As pointed out by Colonel McNeile, it would be very unjust to deprive the assignee of Government revenue of the power to proceed against the land for an unliquidated decree for revenue. The Government has this power, and must retain it as regards its own revenue; and the same power could not be denied in the extreme circumstances only under which it would be applied for to the jagirdar or mafidar.

10. It would also appear to be consonant with equity not to refuse the extreme measure of sale under decree of court in the case of a mortgage where the intention of the contracting parties clearly was that

this resource might be brought into play. Nor could a claim to foreclose a mortgage under the law applicable to the case be consistently disallowed.

11. The real point to consider is, what is best for the interests of the people. The Government, having so large an interest in the land, is undoubtedly at liberty to impose any restriction on the alienation of land that it may please. The strongest advocates of restriction propose it for a time during, as it were, the pupilage of the landowners, and they thereby acknowledge what is a patent fact that *per se* the restriction is injurious. But as I have already said I believe the people now to have emerged into vigorous manhood; and as I also believe that it will be impossible to prohibit the sale of ancestral or joint-acquired land in execution of civil decree in all cases, I have come to the conclusion, though against all my own predilections, that it is inexpedient to impose any further restrictions than have heretofore existed.

12. My opinion is that the security of the land should continue to exist for all debts for which no special security is provided; but that it should not be sold in execution of a civil decree until it has been shown that it is impossible to realize the debt in any other way within a reasonable period, or, say, fifteen years. I would add that it should be the duty of the courts to protect land from sale within the above limit, and that some alteration of Sections 243 and 244 of the Code of Civil Procedure is necessary. In particular, I think that the provision in Section 244, by which "security for the amount of the decree or for the value" of the land is required, should be abolished. The proviso appended to Section 205 it is very important to maintain.

13. It seems to be apparent that if the sale of unmortgaged land is prohibited, the sale of mortgaged land must also be prohibited; because if prohibition in the former case were announced, money-lenders would refuse to advance unless on the security of a mortgage.

14. It must of course be expected that forced sales by decree of court will now and then occur. These may not be altogether an evil. In the richer parts of the country they will be a warning to the landowners to be careful in their money affairs; in these parts they are not likely to be otherwise than very rare. In the wilder parts, such as Jhung and Mooltan, the occasional introduction of a stranger with some money to spend on the location of cultivators will be a benefit.

No. 1652, dated the 26th November 1869.

From—T. H. THORNTON, Esq., D. C. L., Secretary to the Government of the Punjab.

To—The Registrar, Chief Court, Punjab.

I HAVE the honour to reply to your letter No. 1550, dated 10th May last, on the subject of the sale of hereditary or joint-acquired property in land in execution of decrees of civil courts. On receipt of that letter and its enclosures the Honourable the Lieutenant-Governor

deemed it desirable to call for the opinions of the Financial Commissioner and Commissioners of Divisions on the important subject discussed by the Judges of the Chief Court.

2. These opinions have been received, and have been carefully considered by His Honor, with the Minutes recorded by the learned Judges, and copies are forwarded for information.

3. After careful consideration His Honor is inclined entirely to concur in the opinions expressed by Mr. Justice Simson. It is, in His Honor's opinion, beyond a doubt that under no Native rule has the forced sale of hereditary lands for debt been ever recognized · and it is equally certain in his opinion that the *principle* of selling such lands in execution of decrees is at the present time entirely abhorrent to the feelings and opinions of the majority of the people of the Punjab. That it is equally distasteful to the people of the North-West Provinces was sufficiently testified in 1857 by the scenes witnessed on the banks of the Eastern Jumma Canal by English refugees from Delhi—villages in flames in all directions, and their auction purchasers ejected and dispersed, while their women flung themselves into wells to escape dishonour.

4. With these facts before him His Honor is strongly of opinion that the absolute sale of hereditary or joint-acquired property in land in execution of decree should be prohibited, and that no temporary alienation of land under Section 244 of the Code of Civil Procedure should exceed 20 years.

5. Accordingly His Honor would be glad if the Judges would prepare a draft enactment to the above effect, together with such subsidiary provisions as they may consider called for for submission to the Legislature.

No. 292, dated the 31st January 1870.

From—T. W. Smyth, Esq., Registrar, Chief Court, Punjab.

To—The Secretary to the Government of the Punjab.

I am desired to acknowledge the receipt of your letter No. 1652, dated 26th November 1869, conveying the opinion of the Honourable the Lieutenant-Governor that the absolute sale of hereditary or joint-acquired property in land in execution of decrees should be prohibited, and requesting the Judges to prepare a draft enactment to that effect for submission to the Legislature.

2. In reply, I am to submit a Note on the subject by Mr. Justice Boulnois and Mr. Justice Simson, and to state that instead of preparing a draft Bill, as suggested by His Honor, the Court thinks that it would be preferable to submit to His Excellency the Governor General in Council all the correspondence on the subject, as the Judges understand that the Legislative Council prefer to draft their own Bills.

3. As Mr. Justice Lindsay is unable to concur in the opinions already recorded by the Court, and concurred in by His Honor, he desires to submit a separate Note on the subject.

Minute.

Now that the Judges have brought to the notice of the Government that the check upon the sales of ancestral land and joint-acquired property, afforded by the Notification* dated 26th September 1866, is practically of but little or none effect, the question resolves itself into one of political economy rather than one of law.

* No. 1225.

The Government of the Punjab has closed the question by declaring its opinion that the absolute sale of hereditary or joint-acquired property in land in execution of decree should be prohibited, and that no temporary alienation of land under Section 244, Code of Civil Procedure, should exceed 20 years; and it only now remains for this Court to carry out the directions of the Government, and submit a proposal for the precise alteration in the law, that would effect the object which the Government declares itself to have in view. This is a matter of extreme simplicity; and, in order to carry out the intentions of the Government, all that would be required would be that it should be enacted that, notwithstanding anything contained in Section 205 of the Code of Civil Procedure, no hereditary or joint acquired interests in land shall be sold in satisfaction of a decree of a civil court.

But in sending the papers back to this Court for the purpose of having a draft Bill prepared, the Government does not practically expedite the matter, and the only course that can do so will be the submitting the papers to the Government of India.

The Judges of the Chief Court who are in favour of the restriction upon the sale of land in execution of decrees would point out, with all deference to the opinion of the Financial Commissioner, that so much of it as is founded on the assumed fact that sales of ancestral and joint-acquired land have been going on for many years, and have not interfered with the prosperity of the Province, requires to be somewhat further substantiated by reference to statistics. Those are to be found only in this Office: a reference to which appears to establish that the Judicial Commissioners, as well as the local authorities over the country, have systematically discouraged these sales. Hence no inference can be drawn from the fact that such sales have hitherto been permitted. They have hitherto been most exceptional, and have been rendered so by means not altogether regular, such as intentional delay in disposing of them.

The Government has referred very briefly to what occurred on the banks of the Eastern Jumna Canal in 1857. The Judges may perhaps assist in elucidating the matter by sending up an annexure, in which the opinion of Mr. Edwards, recently a Judge of the Sudder Court of Agra, is fully stated.

C. BOULNOIS, }
D. SIMSON, } *Judges.*

Opinion of Mr. Edwards.

"To the large number of these sales (*i. e.*, in execution of the degrees of the civil courts) during the past 12 or 15 years, and the operation of our revenue system, which has had the result of breaking up the village communities, I attribute solely the disorganization of this and the neighbouring districts in these Provinces.

"By fraud or chicanery a vast number of the estates of families of rank and influence have been alienated, either wholly or in part, and have been purchased by new men, chiefly traders or Government officials, without character or influence over their tenantry. These men in the majority of instances were also absentees, fearing or disliking to reside on their purchases, where they were looked upon as interlopers and unwelcome intruders. The ancient proprietory of these alienated estates were again living as tenantry on the land once theirs, by no means reconciled to their change of position, but maintaining their hereditary hold as strong as ever over the sympathies and affections of the agricultural body, who were ready and willing to join their feudal superiors in any attempt to recover their lost position and regain possession of their estates.

"The ancient landed proprietory body of the Budaon District were thus still in existence, but in the position of tenants, not proprietors. None of the men who had succeeded them as landowners were possessed of sufficient influence or power to give me any aid in maintaining the public tranquillity. On the contrary, the very first people who came in to me imploring aid were this new proprietory body, to whom I had a right to look for vigorous and efficient efforts in the maintenance of order; on the other hand, those who really would control the vast masses of the rural population were interested in bringing about a state of disturbance and general anarchy.

"For more than a year previous to the outbreak I had been publicly representing to superior authority the great abuse of the power of the civil courts, and the reckless manner in which they decreed the sale of rights and interests connected with the soil in satisfaction of petty debts, and the dangerous dislocation of society which was in consequence being produced. I then pointed out that although the old families were being displaced fast, we could not destroy the memory of the past or dissolve the ancient connection between them and the people; and I said distinctly that, in the event of any insurrection occurring, we should find this great and influential body, through whom we can alone hope to control and keep under the millions forming the rural classes, ranged against us on the side of the enemy, with their hereditary retainers and followers rallying round them in spite of our attempts to separate their interests. My warnings were unheeded, and I was treated as an alarmist, who having hitherto only served in the Political Department of the State, and being totally inexperienced in revenue matters, could give no sound opinion on the subject. Little did I think at the time that my fears and forebodings were so soon to be realized."

Note regarding the sale of land in execution of decree of court.

I AM opposed to the introduction of a law by which the sale of land in execution of decrees of court would be absolutely prevented in the Punjab. So far as my experience goes, I do not find the Punjab in its tutelage. The inhabitants of the Province appear to be thoroughly able to take care of themselves, their land, their money. They thoroughly understand the value of money and land.

I see no reason why there should be one law in the Punjab and another in the North-Western Provinces on the subject of sales of land in execution of decrees of court. I think it is very generally allowed that in the North-Western Provinces the sale of land in execution of a decree of court is rightly permitted.

We have created an alienable, transferable, property: and what a man may alienate for his own pleasure, of his own free will, he should be compelled to alienate under certain circumstances, if he incur debt and refuse or be unable to pay it.

It is absolutely necessary sometimes to sell landed property when its state will not satisfy the debt, and more, will not even meet the interest on that debt.

It seems to me that cases may occur where it would be beneficial that a capitalist should come in and infuse new energy, give life to the decaying property. Surely the arrival of such a man may and is likely to do good. What is the use of propping up a family that has lived its time, that by its own foolish acts has brought upon itself the ruin staring it in the face. Far better is it to tell that family to look to other sources than their ancestral lands for their daily bread: allowed to retain his ancestral lands the owner leads a miserable existence, on the very barest pittance; sent out into the world and told to depend upon their own resources, the younger members may perhaps do something for themselves.

Again, may it not be that legislation, instead of improving the condition of the debtor, may render it worse? If we impede or absolutely prevent the sale of land, do we not depreciate the value of land as a security for money lent; and consequently will not the landholder find greater difficulty in obtaining money in the time of need?

I do not for one moment advocate the indiscriminate sale of land. The reckless sale of land is as bad, if not worse, than the absolute prevention of sale of land in execution of a decree of the civil court. I think if the civil courts will carefully carry into effect Section 243, and Collectors and civil courts carefully work Section 244, Act VIII, 1859, the sale of land in execution of decrees will be rare, and only take place in very extreme cases, where there is no other way of satisfying the debt. I call attention to the observations of the Sudder Dewanee Adawlut, North-Western Provinces, on this question, and the observations of the High Court, North-Western Provinces, in the civil administration reports.

In that for 1860 Registrar says—

"They are disposed, however, to think that at least as much may be effected to mitigate the severity of the sale law in execution of decree, and this without detriment to the claims of the decree-holder, by a right administration, on the part of the civil courts themselves, of Section 243, as by the interference of the revenue authorities under Section 244."

The Lieutenant-Governor of the North-Western Provinces appears to have endorsed this opinion. In the report for 1861 the Sudder Dewanee Adawlut writes—

"The Court are desirous that the use of these mitigative processes of execution should become more general; not because they at all think that, where a landed proprietor has become so hopelessly involved as to render it impossible to satisfy his just debts by milder processes, sale by auction of hereditary estates should in such cases be refused. On the contrary, in such cases the Court readily recognize the necessity of sale, and regard the power to sell up given by law to be highly useful. But they observe that, under the former practice of our courts, resort to sale was not confined to such cases only, but was, there can be no doubt, too indiscriminately applied, without considering whether a less severe process would not have succeeded, or enquiring whether the embarrasment was absolute and hopeless, or temporary only. The less severe expedients demanded more trouble than the simple one of sale, which was carried out by the Revenue Department, and thus sales were multiplied where they might have been avoided. It is this abuse, not the proper use, of sales in execution which the Court desire to correct."

Again, in writing of sales in execution of decrees, the Court says—

Report for 1863.

"that the shares sold in execution of decrees are usually of very little value, and that, unless the judgment-debtor is hopelessly involved, he is usually able to make some adjustment without the intervention of the Court. Co-sharers, it has been remarked, would prefer becoming absolute proprietors by exercising the right of pre-emption, and therefore hang back when temporary alienation only is proposed, and it is very seldom that an outsider will accept the temporary transfer of a portion of a village for a limited period. The result is that the share-holders can often force the sale. In practice it has been found that judgment-debtors seldom or never apply for the realization of their decrees by mortgage or lease, as the income of the land proposed to be thus temporarily alientated is generally insufficient to cover the interest of the debt, and the land is often already burdened by previous mortgage. In these cases a resort to the sale process in execution of the decree is imperative." On the whole, the Court was of opinion that the mitigative processes had worked well.

The High Court, in its report for 1866, writes—"So long as the decree-holder is not injured, the activity of the Collector, or of the court itself, in preventing permanent alienation of land, is not objectionable."

Thus we find that the highest court in the North-Western Provinces, men of vast and long experience, consider that under certain circumstances it is necessary to sell land in execution of decrees of civil courts; that the decree-holder is not to be injured by the too great activity of the Collector or the civil courts.

Supported by the authorities I have named, by my own experience, by the opinion of experienced men in this Province, by the able opinion of the Financial Commissioner, Mr. Melvill, I submit with deference my opinion on the proposed enactment.

This Note will be forwarded to the Government of the Punjab, with the draft law my honourable colleagues may draw up.

C. R. LINDSAY,

Judge.

No. 667, dated Lahore, the 12th May 1870.

From—T. H. THORNTON, Esq., D. C. L., Secretary to the Government of the Punjab.

To—The Secretary to the Government of India, Home Department.

IN continuation of my letter No. 227 of the 18th February, forwarding papers relating to the sale of hereditary or joint property in land in execution of decrees of court, I am desired to forward copy of a further communication No. 1065, dated 7th May, from the Registrar, Chief Court, on the subject.

No. 1065, dated the 7th May 1870.

From—W. COLDSTREAM, Esq., Offg. Registrar, Chief Court, Punjab.

To—The Secretary to the Government of the Punjab.

IN continuation of my No. 292 of 31st January last, I am desired to bring to the notice of Government that the question of the contemplated prohibition of the sale of ancestral land in execution of decrees appears to the court to be an urgent one.

2. The applications for sanction to the sale of such property made to the Court, in accordance with Punjab Government Notification No. 1225, dated 26th September 1866, are at present rejected by the Court, and on rejection it is suggested that the Court executing the decree takes action under Sections 243, 244, Civil Procedure Code.

3. As represented to you in my letter above quoted, the Judges are not unanimous in their opinion as to the desirability of a legal prohibition of the sale of ancestral land in execution of the decrees of the

civil courts; but applications are rejected, because the Court feels it proper in such an important matter to act upon the view taken by the executive Government.

4. The Judges, however, desire me to express the hope that this pressing question may soon be settled by legislative enactment, or otherwise, so that the action of the Court may proceed upon a satisfactory basis.

No. 1289, dated Murree, the 5th September 1870.

From—T. H. THORNTON, Esq., D. C. L., Secretary to the Government of the Punjab.

To—The Secretary to the Government of India, Home Dept.

IN reply to the enquiry made in Home Department docket No. 1508 of the 24th August, whether all sales of land by auction have been temporarily discontinued in this Province, I am desired to refer to the communication from the Registrar, Chief Court, of which copy was forwarded to the Home Department with letter from this Office No. 667, dated 12th May last, in which it was stated that "the applications for sanction to the sale of such property (ancestral land) made to the Court in accordance with Punjab Government Notification No. 1225, dated 26th September 1866, are at present rejected by the Court, and on rejection it is suggested that the Court executing the decree take action under Sections 243 and 244, Civil Procedure Code".

2. This action has been taken by the Chief Court with reference to the views of the Judges, the Financial Commissioner, and the Local Government in regard to the sale of ancestral property under decrees of court, on which subject a reference was made to the Supreme Government in my letter No. 227 of the 18th February last, which has not yet been replied to.

Nos. 1713 to 1721, dated Simla, the 22nd September 1870.

From—E. C. Bayley, Esq., c. s. i., Secretary to the Government of India, Home Department.

To—The Secretary to the Government of Madras.

Ditto	ditto	of Bombay.
Ditto	ditto	of Bengal.
Ditto	ditto	of the N. W. Provinces.
Ditto	Chief Commissioner	of Oudh.
Ditto	ditto	of the Central Provinces.
Ditto	ditto	of British Burma.
Ditto	ditto	of Coorg.
Ditto	Resident at Hyderabad.	

I am directed to request that * will be good enough to submit at your early convenience a full report on the working of Sections 243 and 244 of the Civil Procedure Code with such statements and details as will illustrate the effects which these sections have on sales of land under decrees of the civil courts.

* Madras ... } Bombay ... } with the permission of His Excellency the Governor in Council, you
Bengal ... } N. W. Provs. } with the permission of His Honor the Lieutenant-Governor, you
Oudh ... } Central Provs. } B. Burma ... } Coorg ... } Hyderabad ... } you

No. 330, dated Bombay Castle, the 21st January 1871.

From—E. W. Ravenscroft, Esq., Acting Chief Secretary to the Government of Bombay.

To—The Offg. Secretary to the Govt. of India, Home Dept.

With reference to your letter No. 1714, dated 22nd September 1870, wherein you request a report on the working of Sections 243 and 244 of the Civil Procedure Code, I have the honour to forward reports of the Judges of this Presidency, by which you will perceive that the provisions of those sections have been made use of to a very limited extent.

No. 1146, dated Rutnagherry, the 2nd November 1870.

From—R. W. Hunter, Esq., Acting Judge of the District of Rutnagherry.

To—The Acting Secretary to the Government of Bombay, Judicial Department.

With reference to the Under Secretary's endorsement No. 3776, dated 5th October last, in the Judicial Department, I have the honour

to state that there has hitherto been no occasion to bring into operation the provisions of Sections 243 and 244 of the Civil Procedure Code in this district.

No. 1417, dated Ahmedabad, the 14th November 1870.

From—F. D. MELVILL, Esq., Acting District Judge of Ahmedabad.

To—The Under Secretary to the Government of Bombay, Judicial Department.

IN reply to your endorsement No. 3776, dated 5th October 1870, forwarding Government of India's letter No. 1714 of the 22nd September last, I have the honour to report that I can hear of no instance in which Section 244 of the Civil Procedure Code has been resorted to in this district. In only six cases was a Manager appointed under Section 243, the Collector in each case being appointed, and in two of them the amount of the decree was evêntually voluntarily paid by the defendant.

2. It is clear, therefore, that these sections have no effect on the sales of lands under decrees of the civil courts in this district.

No. 1749, dated Belgaum, the 14th November 1870.

From—C. F. H. SHAW, Esq., District Judge of Belgaum.

To—The Secretary to the Government of Bombay, Judicial Department.

ADVERTING to Government Resolution No. 3776, dated 5th October 1870, I have the honour to state that Sections 243 and 244 of the Civil Procedure Code have remained almost inoperative in the judicial district, Belgaum.

2. There have been very few original suits instituted in the courts of the Judge at Belgaum or Assistant Judge at Kulladghee in which action could have been taken under Section 243, and in those in which proceedings under this section might have been taken the relief provided has not been sought.

3. In the lower courts at Belgaum, Uthnee and Sownduttee no single case of an order under Section 243 is upon record.

4. Two orders under Section 243 have issued from the court of the Sudordinate Judge at Bagulcote, and others are mentioned as having been allowed in the court of the Subordinate Judge at Chickodee, but the numbers are not stated.

5. There is not a single order under Section 244 on the records of any of the courts referred to above; and though Government Resolution No. 4189, dated 23rd December 1865, enables civil courts to require assistance from Collectors, there has been no necessity to demand aid. Nor has a single case been brought to my notice of

Government interests having been injuriously affected by the independent action of civil courts. Had any such case occurred, the Collectors at Belgaum and Kulladghee must have written to me.

6. The reports of the Subordinate Judges at Beejapore and Moodebehal have not been received; but as I have no reason to think a different practice obtains in their courts, I have not thought it necessary with Government memorandum No. 4339, dated 9th instant, before me, to delay any longer the submission of present reply.

Statement showing the details illustrating the effects of Sections 243 and 244 of the Civil Procedure Code.

No.	Register No.	Name of the parties.	Remarks.
	1870.		
1	193	Soobajee Sheshgeer Rao Tauksalee *vs.* Bheemrao bin Ven Kutrao.	The plaintiff attached the Deshgut of the defendant under execution of decrees and moved for sale. The defendant moved that he was in a position to borrow the amount of the decree and pay the plaintiff in four months. The sale was accordingly postponed for two months.
2	371	Venkajee Swamirao Carcoon *vs.* Kalowa Kone Bhoojungrao Desayee.	Ditto ditto ditto. The defendant moved that he could raise the amount of the decree by mortgaging his other lands, and prayed for six months' delay. The sale was accordingly postponed for two months.

Belgaum;
The 14*th November* 1870.

C. F. H. SHAW.
District Judge.

No. 2443, dated Surat, the 16th November 1870.

From—The Acting District Judge.

To—The Acting Secretary to the Government of Bombay, Judicial Department.

In reply to your reference No. 3776 of 5th October 1870, and memorandum No. 4339 of 9th November, I have the honour to report that Sections 243 and 244 of Act VIII. of 1859 have hardly ever been put in force in the courts of this district. In fact, only one case of

the enforcement of each section is reported by the Subordinate Judges, neither of which presents any special features calling for remark, or on which any opinion could be based as to the probable effects of those sections.

No. 2240, dated Poona, the 22nd November 1870.

From—A. C. WATT, Esq., Acting Judge, Poona.

To—The Secretary to the Government of Bombay, Judicial Department.

IN reply to your endorsement No. 3776 of the 5th ultimo, I have the honour to state, after having made references to all the subordinate courts, that the instances of Sections 243 and 244 of the Civil Procedure Code being acted upon are so rare that no statements or details can be submitted.

2. From the accompanying letter of the Senior Assistant Judge of Sholapore it will be seen that in his part of the Poona Civil District neither section has been worked at all, and Section 244 has not been worked in any of the courts of the Poona District.

3. In the subordinate courts of this part of the Poona District in a very few instances Section 243 has been worked, and the 1st class Subordinate Judge of Poona reports that the provisions of this section have a good effect as respects the attachment and sale of debts; for such property being by its nature of uncertain value, loss is occasioned to the judgment-debtor by the debts being sold for much under their true value, or else loss occurs to the purchaser from the debts not realizing what was expected. The 1st class Subordinate Judge of Poona also reports that the second part of Section 243 is of great advantage to the judgment-debtor, as immovable property sold at a court sale never fetches its full value.

No. 574, dated Sholapore, the 2nd November 1870.

From—W. B. BAKER, Esq., Acting Senior Assistant Judge.

To—The Judge of Poona.

WITH reference to your endorsement No. 2004 of the 19th ultimo, forwarding a copy of the Secretary to the Government of India's letter No. 1714 of the 22nd September last, which was received through the Secretary to Government of Bombay under his endorsement No. 3776 of the 5th ultimo, calling upon me to submit a report on the working of Sections 243 and 244 of the Civil Procedure Code, I have the honour to inform you that none of the courts in this district have had occasion to act according to the provisions of these sections.

No. 817, dated Dharwar, the 28th November 1870.

From—The Acting Judge of Dharwar.

To—The Secretary to the Government of Bombay, Judicial Department.

In reply to Government Resolution No. 3776, dated 5th ultimo, I have the honour to report that as Government have never yet directed, under Section 248, Civil Procedure Code, that the sale of lands paying revenue to Government shall be conducted by the Collector, Section 244 is not in force in this district.

2. It appears also that Section 243 has been very seldom made use of, so much so that only two instances have been discovered in the whole district. In one of these cases time was allowed the defendant to dispose of his land by private sale, which he did; and in the other a manager was appointed in A. D. 1862, and still continues in charge of the property, paying the proceeds of his management into court annually. This latter case does not, however, fall under Section 243 strictly speaking, because the decree itself provided that the debt was to be paid off from the produce of the land.

No. 994, dated Sattara, the 1st December 1870.

From—The District Judge of Sattara.

To—The Secretary to the Government of Bombay, Judicial Department.

In reply to your endorsement No. 3776 of the 5th October last, on a letter from the Government of India calling for a report on Sections 243 and 244 of the Civil Procedure Code, I have the honour to state as follows.

2. As to the first portion of Section 243, *i. e.*, the appointment of a manager of attached property in the shape of land and houses, a few cases have occurred in the jurisdictions of the Subordinate Judges of Sattara, Kurrar, and Tasgaum, in which managers have been appointed of enam lands attached to pay of the amounts of judgments passed against the owners of such land. Such managers are paid by a percentage of five per cent. on the amounts realized; this amount being, of course, included in the costs of realization. The necessity for the appointment of managers as above has not, however, often arisen; at the most, it has only been in six or seven cases that this has been done.

3. As to the second part of this Section 243, the postponing final execution to allow of a mortgage being executed, or to come to favourable terms for the disposal of the decree: This has occurred in two or three cases only in the jurisdictions of the Waee and Sattara Subordinate Judges, but in no other parts of this district; and all that can be discovered in these cases is that the application for execution has been withdrawn, but what were the exact terms of the private settlement of the decrees between the parties has not been stated to the court.

4. As to the procedure laid down in Section 244, it does not appear that in this district any such practice exists.

5. It is not much the practice for the courts to avail themselves of the Collector in executing decrees against land; they generally prefer to take this matter into their own hands; and I may refer to a circular of the late Sudder Court, No. 170 of 1860, in which it was directed (paragraph 48) that sales of land should only be made through the Collector in special cases under the orders of Government,—all ordinary sales being ordered to be conducted by the civil courts.

6. I may state that the portions of land sold under decrees of the civil courts are generally so small that the interference of the Collector is not called for; besides which the claims of the Collector on such land are so well known in all cases that no loss can possibly occur to Government which could warrant the interference of the Collector on the part of Government, and the sales themselves can be perfectly well conducted by the officers of the courts,—all the assistance required from the revenue authorities being copies of fields' registers, showing Government rent payable, the acreage, boundaries, and the names of the registered holders of the land as shown in the latter part of Section 213. The purchaser of the land gets a certificate from the court, and he then makes his own arrangements for having his name entered in the records as the purchaser. With this the civil court has nothing to do.

7. The above shows the extent to which the Sections 243 and 244 are made available in this district; and as the nature of the land paying rent to Government, as apparently contemplated in these sections, is, for the most part, different from the nature of the land paying rent to Government in this district, the sections do not often come into use. What these sections would appear to contemplate is large tracts of land "zemindarees" such as exist in the Bengal Presidency; but as the system here is ryotwar holdings direct under Government, these sections are seldom or never called into force.

No. 2258, dated Tanna, the 6th December 1870.

From W. M. P. Coghlan, Esq., Judge of the Tanna District.

To—The Secretary to the Government of Bombay, Judicial Department.

In reply to the Acting Under Secretary to Government of Bombay's endorsement No. 3776 of the 5th October 1870, forwarding a copy of letter No. 1714 of the 22nd September 1870 from the Secretary to the Government of India, I have the honour to report that, as regards this district, Sections 243 and 244 of the Civil Procedure Code have practically been a dead letter.

2. No action has ever been taken under the sections in question by the district court, and in the subordinate courts the sections have only been used, as far as I am able to learn, in seven instances, which call for no special remark.

3. I have elsewhere (in Scind) had experience of the working of the sections, and am of opinion that they work well and beneficially to estates under decrees.

No. 1616, dated Dhoolia, the 16th December 1870.

From—The Honourable G. A. Hobart, District Judge in Khandeish.

To—The Under Secy. to the Govt. of Bombay, Judl. Dept.

With reference to your endorsement No. 3776 of 1870, dated 5th October last, forwarding copy of letter No. 1714 of 22nd September 1870, from the Secretary to Government of India, to the Secretary to the Government of Bombay, I have the honour to state that, after receiving reports from the Subordinate Judges in this district on the subject, I find that Section 244 of the Civil Procedure Code has not been brought into operation in this district,—neither Government nor the Collector having interfered with the action of the courts in the matter of sales of land; and I find that, though managers have been in some instances appointed under Section 243 for the purposes therein specified, yet that it has generally been merely to sue for debts, and that such appointments, with power to collect rents and other receipts and profits of land, or other immovable property, have been exceptional; that it does not appear that in any of such cases any objection has been raised by judgment-debtors or others to the proceedings of the manager. On such negative evidence, therefore, it is impossible to submit a report showing whether the first part of Section 243 has been successfully worked or not; and I find that no applications have been as yet made to the courts in this district by judgment-debtors to postpone the sale of land, with a view to their raising the amount of their judgment-debts by mortgage or other alienation.

No. 6, dated Carwar, the 2nd January 1871.

From—A. L. Spens, Esq., Acting District Judge of Canara.

To—The Secy. to the Govt. of Bombay, Judicial Department.

With reference to Government Resolution No. 3776 of 1870, dated 5th October last, I have the honour to submit my report on the points therein specified.

The first part of Section 243, Civil Procedure Code, which provides for the appointment of a manager in cases in which debts or real properties of judgment-debtors are attached in satisfaction of decrees passed against them, is not in operation in this district for the following reasons:

(1) Debts attached in this district are mostly those which are payable to the debtors by courts or Government offices, are not those due to debtors by private individuals. I do not mean to imply that such debts

are never attached, but that they are rarely and very seldom attached. In a very large majority of cases real and personal properties are attached, and I see no necessity, therefore, for the appointment of a manager.

(2.) The real properties attached in this district are generally small portions of lands paying revenue to Government, the value not exceeding Rs. 500 to Rs. 1,000. Lands exceeding in value Rs. 1,000 are very rarely indeed ever attached; but if they are, sales are not postponed so long as to render the appointment of a manager necessary.

As a rule, property attached is sold within four or five months from date of attachment, and that after opposition and consequent enquiry under Section 246 of the Civil Procedure Code. The procedure laid down in the latter part of Section 243, Civil Procedure Code, and which provides for postponement of sales on application of judgment-debtors, to effect that they will satisfy decrees by private sales, &c., &c., of their properties, is in force in this district.

But as this section clearly provides that the judgment-debtor shall satisfy the court that there is reasonable ground to believe that the amount of the judgment may be raised by the mortgage of the land, or by letting it on lease, or by disposing by private sale of a portion of the land, or of any other property belonging to the judgment-debtor, there is no difficulty in carrying out its provisions. I have found judgment-debtors are very fond of making applications on false statements. I therefore am most particular in disallowing applications for postponements, unless the judgment-creditor or his pleader in court certifies to the propriety of the judgment-debtor's application.

In most cases the creditors withdraw their applications from the file, and further time is consequently allowed to the debtor.

It only very occasionally happens that the creditor has given short time, and that the sales are therefore postponed, and the application for execution of the decree thus kept on the file.

When sales are thus postponed, the decrees are frequently privately satisfied, and receipts filed in court.

I see nothing in the provisions of Section 243, Civil Procedure Code, detrimental to the interests of the public. I always, however, favour the satisfaction of debts by private sales if possible, as the sellers of property have then the opportunity of selling at favourable opportunities, rather than at forced stated periods, when purchasers know that the property will be sold for whatever it may fetch. Both debtors and creditors, as a rule, recognize the advantage of private settlements, provided they be effected through the court.

Compulsory sales at a stated time are only resorted to when debtors are dishonest and wish to shirk their liabilities.

Section 244 has not been put in force in this district.

I have made no detailed statement of cases of postponement under the latter half of Section 243, as I know of only one case throughout the district which has occurred since the transfer of North Canara to the Bombay Presidency, and that was eventually amicably settled.

No. 23, dated Ahmednuggur, the 4th January 1871.

From—A. Bosanquet, Esq., Acting Judge of Ahmednuggur.

To—The Secretary to the Government of Bombay, Judicial Dept.

With reference to your endorsement No. 3776 of the 5th October last, calling for a report regarding the working of Sections 243 and 244, Civil Procedure Code, in this district, I have the honour to forward a detailed statement of all the cases in which these sections have been brought into operation in this district since the Act was passed.

2. That statement shows only three cases in which the powers given by those sections have been used. Those sections are almost a dead letter in this district. The fact is that the provisions of those sections are applicable to judgment-debtors possessed of large estates or carrying on extensive trades; but in this district there are very few judgment-debtors of such a class. The vast majority of judgment-debtors in this district are peasants, cultivating small plots of lands, or labourers. There are, therefore, very few cases in which the provisions in these sections can be carried out.

Statement showing the nature of execution of applications for enforcement of decrees under Sections 243 and 244 of Act VIII. of 1859 in the Ahmednuggur District since the Civil Procedure Code came into operation.

1	2	3	4	5	6
Number of applications.	Names of parties.	Amounts for which applications presented.	Nature of immovable property.	Decision by the court on applications of defendants.	How executed.
		Rs. As. P.	*Court of the Subordinate Judge, 1st Class, Ahmednuggur.*		
1209 of 1868.	DECREE No. 15, 1839. Plaintiff—Krishnageer Gurunath Narayengeer. deceased, by his heir Nurputgeer Krishnageer, deceased, by his heir Maharajgeer Guru Narpatgeer Bawa Gosawee, *versus* Defendants—Krishnarao Bin Mulharrao Somwanshee, Jahageerdar, deceased, by his son and heir Anundrao Bin Krishnarao, and Yadowrao Bin Krishnarao, Jahageerdar of Jowlay.	35,507 11 0	Manager Madhowrao Rajaram, Kurkun at Jowlay.	The whole amount of jahageer dues received was Rs. 566-9-4, of which Rs. 65 were paid to the Manager, and Rs. 175 to the plaintiff; and the remaining amount, Rs. 391-9-4, was made over to the defendant Anundrao, on appeal preferred by him having been decided in his favour.	
			Court of the Subordinate Judge of Newassa.		
572 of 1869.	Plaintiffs—Bhawandas *wulud* Anupchand and Nandram *wulud* Bhawandas, Marwaree, of Sonai, Division Newassa, *versus* Defendants—Dajee Wulud and Keshow Patil.	934 0 4	Field No. 6, acres 10, 32 chains, rent Rs. 11-12; No. 35, acres 20, 12 chains, rent Rs. 14-8; and Field No. 36, acres 21-10, rent Rs. 16-8.	As interest was allowed till the amount was discharged in the decree, it appeared that a manager could be appointed without prejudice to the opponent plaintiff by letting the lands on lease, which would clear off defendants' debts; and Bhawanee Patil who was prepared to give the produce of the attached land worth Rs. 300 every year, and possessed a certificate as to his competency, and if he objected to give the produce, the land could be, without objection, sold by auction. The application was therefore agreed to, and order issued to the parties. Costs on the applicant, dated 2nd February 1870.	According to the decision an agreement has been taken from the Patil Bhawanee *wulud* Venkujee for letting the lands which have been delivered over to him and receipt taken. The amount is being received by instalment.
1711 of 1869.	Plaintiff—Dowlatram Bin Mulchand, Marwaree, of Sonai, *versus* Defendants—Shahajee *wulud* Khandujee Naik, and joined, under Section 73, defendant Haumantrao *wulud* Deorao, of Pargaum, Division Newassa.	464 4 0	Field No. 85, acres 6-15, rent Rs. 7-4-0. Field No. 86, acres 2-10, rent As. 11.	The opponent plaintiff having given his consent in his examination to the arrangement proposed in a petition by the defendants, it was ordered that the petitioners do pay annually one-sixth part of the amount of durkhaust, together with costs, at the time of paying Government assessment on the crops each year, and thus pay off all the debts in three years; on default the lands would be sold.	According to the decision an agreement has been taken from Santukram *wulud* Gungaram, Marwaree, and Myral Balajee, Kulkarnee.

AHMEDNUGGUR;
The 4th January 1870.

A. BOSANQUET,
Acting District Judge.

No. 451, dated Fort St. George, the 12th April 1871.

From—The Honourable R. S. Ellis, c. b., Chief Secretary to the Government of Fort St. George.

To—The Secretary to the Government of India, Home Dept.

With reference to your letter, under date the 22nd September last, No. 1713, requesting to be furnished with a report on the working of Sections 243 and 244 of the Code of Civil Procedure in this Presidency, I am directed to submit the annexed copies of letters from the Acting Registrar of the Madras High Court and the Acting Secretary to the Board of Revenue, containing, respectively, the observations of the Judges of that Court and of the Board of Revenue on the subject, and to state that the Madras Government have nothing to add to the remarks made by the Judges.

13th February 1871, No. 319, and 28th February 1871.

No. 319, dated Madras, the 30th February 1871.

From—The Acting Registrar of the High Court of Judicature at Madras, Appellate Side.

To—The Chief Secretary to the Government of Fort St. George.

I am directed to acknowledge the receipt of your letter to the Chief Justice dated 12th October 1870, No. 1325, forwarding copy of the Proceedings of Government, Judicial Department, of the same date, and requesting the opinion of the High Court on the working of Sections 243 and 244 of the Civil Procedure Code in this Presidency.

2. Several of the civil Judges and subordinate judicial officers have submitted reports on the subject, and I am now directed to offer the following observations: Section 244 of the Civil Procedure Code has no application in this Presidency, the Government not having at any time, either generally or specially, directed sales of land to be conducted by Collectors under the provisions of Section 248. The civil Judges of Cuddalore and Guntoor recommend that all sales should be conducted by Collectors. This is a matter on which the Board of Revenue are better able than the High Court to offer an opinion.

3. As regards the working of Section 243, the general impression seems to be that postponements of sale are generally inefficacious, and that when lands, houses, &c., have actually been proclaimed for sale, it is probable that the judgment-debtor has failed in all his attempts to raise the amount required by mortgage, lease, or private sale. The application for postponement is then made simply to keep the creditor at bay, and the sale is sooner or later inevitable.

Instances, however, are cited in which, but for this provision for the postponement of a sale, property would have been sold considerably below its value; and in this respect if discreetly used, the section is useful. The High Court have issued strict rules prohibiting courts from postponing sales except on very special grounds.

The Principal Sudder Ameen of Cuddapah is of opinion that the provisions of the section are not applied so frequently as they might be, owing to the ignorance of the people and the fear of the judgment-debtor to appear in court and run the risk of being arrested. He suggests that the court should, on its own motion, be authorized to postpone sales if obviously for the benefit of the judgment-debtor, and that the court should further have the power of placing the judgment-creditor by process of court in possession of property as mortgagee until his debt is extinguished.

4. As regards the appointment of managers, the prevailing opinion seems to be that the section operates to the satisfaction of debtors and creditors, particularly in the case of large zemindaries and old family estates which are heavily encumbered. Great difficulty is, however, felt in procuring suitable managers. That office, as Mr. Justice Holloway observes, is, for obvious reasons, sought by dishonest men as anxiously as it is avoided by prudent and honest men.

The Acting Civil Judge of Tanjore is alone in his opinion that management by a stranger is so repugnant to the Hindu mind that debtors would generally prefer to have their estates sold outright, and that creditors are often anxious to force on sales against their own interests.

5. A case in which a village was kept under the management of the Collector, and the net income divided among eighteen decree-holders in liquidation of their respective decrees, will be found reported at page 272 of the fifth volume of the High Court Reports. In that case the High Court held that the provisions of the section ought not to have been applied. It appeared that it would take from fifteen to twenty years to satisfy all the decrees against the property.

Dated Madras, the 28th February 1871.

From—The Acting Secretary to the Board of Revenue.

To—The Secretary to the Government of Madras, Revenue Department.

With reference to G. O., 21st October 1870, No. 123, I am directed to submit the accompanying reports of Collectors, from which it appears that no case has occurred in this Presidency in which action has been taken under Section 244 of the Civil Procedure Code.

2. It is, however, easy to imagine cases in which this portion of the law would be advantageous.

Dated Fort St. George, the 1st March 1871.

Endorsed by the Government of Madras.

Transferred to the Judicial Department, with reference to G. O. No. 1324, Judicial, dated 12th October 1870.

No. 741—90, dated Nagpur, the 14th April 1871.

From—J. W. NEILL, Esq., Secretary to the Chief Commissioner of the Central Provinces.

To—The Secretary to the Government of India, Home Department.

IN reply to your letter No. 1718 of 22nd September 1870, I am directed to submit, for the information of the Government of India, a memorandum, with accompanying statement, drawn up by the Officiating Judicial Commissioner, to illustrate the effect which Sections 243 and 244, Civil Procedure Code, have on sales of land under decrees of the civil courts of this Province.

2. The Officiating Chief Commissioner concurs generally in Mr. Melvill's remarks regarding the working of the sections in question and the points in which they appear to be susceptible of improvement. He would also draw attention to the fact, which Mr. Melvill also points out, that if recourse has been had, but sparingly, to Sections 243 and 244, the reason is that the law of land sale has only now commenced to operate in these Provinces. Settlements are in most districts only recent, and the people are only beginning to realise the fact that land is saleable for civil debt. On this subject the Commissioner of Nagpur writes in the report to which Mr. Melvill refers in his 7th paragraph:

"In these parts until recently neither creditor nor debtor ever thought of landed rights (proprietary, occupative or other) being sold up in execution of civil decrees. But now that all rights in land are more or less defined, that pleaders are plentiful, and the provisions of the law are more generally known, the execution of decrees by sale of debtors' landed property will become frequent. Section 244 will rarely suffice to prevent such sales. And even under Section 243 sales will be prevented in special cases where the landed property is large and valuable, or in districts where the Collector is peculiarly active and specially willing to keep his landholders and ryots from ruin. Any Collector who may thus desire to be a sort of providence for the proprietors and ryots of his district will have to spend much time and labour on the work if he is to do it effectively. And it is questionable whether many of our Deputy Commissioners in the larger districts have time for such duties."

3. It will be seen from the 23rd paragraph of Mr. Melvill's memorandum that he is disposed to interpret the discretion vested in him by the notification by which Act VIII. of 1859 was extended to these Provinces in a sense somewhat larger than that which has hitherto been accepted. The question is one of very great importance, and the Officiating Chief Commissioner is glad to find that Mr. Melvill takes a view which will admit of his preventing sale in all that large class of cases in which the debt is of very old date.

4. For convenience of reference, I am to enclose copies of the papers to which Mr. Melvill refers in his 15th paragraph. It is quite clear that so far from there being any legal bar to the sale of land for debts incurred prior to the settlement, such debts stand on exactly the same footing as debts of the most recent date. Whatever restriction is placed on the execution of old debts must result from the equitable discretion vested in Commissioners and in the Judicial Commissioner by the notification above-quoted.

In the same manner there is no legal disallowance attaching to the sale of ancestral, which does not equally apply to acquired land. Whatever difference is made in practice must be made in virtue of the same special equitable discretionary power.

5. The Officiating Chief Commissioner would observe that this state of things is not satisfactory. It is unfair both to the landed classes and to their creditors that a divergence of opinion so wide as that indicated in Mr. Melvill's 23rd paragraph should be permitted to exist. The equitable discretionary power conferred by the notification requires to be restricted by some more accurate definition than has hitherto been given to it. Regarding the exact mode of giving effect to this proposal, Colonel Keatinge scarcely feels competent to advise; but he would strongly urge that the law of land sale in these Provinces should be rescued from the uncertainty which at present surrounds it. Had time permitted Colonel Keatinge would have endeavoured to ascertain the practice of the superior courts in Oudh in acting on the Government notification, but full information on this point will no doubt be in the hands of Government.

6. The reference to which Colonel Keatinge is now replying has unavoidably led to some discussion of the general policy and equity of the law which subjects land to sale for civil debts. The conclusions at which Mr. Melvill arrives are—

I.—That land should not be liable to sale for debts anterior to the settlement.

II.—That it should be liable for debts contracted since.

III.—That in future, *i. e.*, after notification of the change, it should be altogether exempt from sale in execution of civil decrees for debt.

IV.—That no difference should be made between ancestral and acquired land.

The Officiating Chief Commissioner does not concur in all these recommendations. Not being clearly aware of the purport of the reference under reply, Colonel Keatinge will not offer his opinion with all the fullness which he would have used had it been explicitly called for, but he trusts that a general statement of his views will not be deemed out of place in this letter.

7. The liability of land for sale for debt is the natural and logical corollary of the conferment of the proprietary right. But Colonel

Keatinge cannot conceal from himself that the boon cannot be conceded in those parts of India with which he is acquainted without serious political danger. The owners of land, as a rule, still possess great influence, whilst they are undoubtedly as a class ignorant of affairs and hereditarily extravagant.

The city men who purchase large estates are, on the other hand, mere money-lenders and usurers, disliked by the country people, and possessing no political influence of any sort.

Mr. Bernard has truly shown in paragraph 11 of his letter that in the Central Provinces these purchasers are men of a nationality distinct from the people of the country, and they can never, like the English city men, become one with the old county families.

The old Indian estates are almost unexceptionally derived from the breaking up of dynasties, and each district has its peculiar caste of land-owners to whom the "new man" will be for generations an abomination and an interloper. Consequently Colonel Keatinge is of opinion that where estates of any magnitude are concerned—estates which it is worthwhile for city men and outsiders to purchase—the interests of Government are vitally concerned in restricting its liability to sale for debt.

Where small holdings are in question, plots so insignificant that they are likely to be purchased by villagers, the same objection to their sale does not present itself to the Officiating Chief Commissioner, and he would consequently wish to see the present plan continued. It certainly is sounder in principle than any other that has been proposed. The existing system which makes land saleable for debt, subject to special control by Commissioners and Deputy Commissioners, might, however, be restricted to ancestral estates with a yearly rental of less than Rs. 300 whilst all ancestral estates of greater value should be absolutely protected from sale for debt.

We should thus have two systems working side by side in the sight of the people, and Native public opinion would be formed from actual observation which would be an invaluable guide to the governing class.

It may, Colonel Keatinge believes, be conceded that the feature of our Government, which is fraught with the greatest political danger, is our tendency to rule in unbending accordance with abstract principles of political economy in neglect of the prejudices of the people, trusting to a future harvest of prosperity to follow these theoretically sound regulations, and ignoring the present crop of misguided prejudice which they sometimes raise around us.

For this reason Colonel Keatinge would urge Government to prohibit all sale of ancestral land above Rs. 300 in value. He believes that this would obviate the political dangers he fears, whilst the free sale of smaller plots would sufficiently meet the requirements of the country, and accustom the mass of agriculturists to view the free transfer of land from a healthy stand point.

Mr. Melvill does not consider it necessary to make any distinction between hereditary and other lands. In this view Colonel Keatinge does not concur, and he would propose to rule that purchased land should pass into the category of ancestral after a lapse of 50 years from the time it was acquired and when it had passed into the second possessor's hands after the original holder. Until these conditions were attained it should be classified as acquired.

It remains to consider what measures would be possible to secure an approximately just disposal of money claims in the larger class of estates reserved from sale.

As to the best legal steps to be followed, Colonel Keatinge does not feel competent to advise Government, but he believes that the system which would best meet that Native public opinion, which he considers it so necessary to consult, would be to legalise the old Native expedient of handing estates over to creditors for stated periods, on the understanding that they were to make what they could out of them during their time of occupancy, and that their claim should terminate with it. Twenty-five years, Colonel Keatinge thinks, should be the extreme limit of time for which an estate should be assigned to creditors, whatever might be the value of the claims against it.

In Europe house property is constantly erected on landed estates, and the farm-houses and out-offices which are of such great value would, the Officiating Chief Commissioner presumes, make this method of liquidating a debt very complicated. In India there is no difficulty of this sort to contend with. Landlords, cultivators and farm-servants all live in the common village; the fields are not even enclosed by hedgerows which could be injured by neglect, and the worst that can happen to land is that it should be thrown out of cultivation when the increased cost of again bringing it under the plough would be nearly compensated by the additional fertility it would have acquired by rest.

8. In short, Colonel Keatinge is of opinion that, from a political point of view, the interests of Government are vitally concerned in restricting the liability of land held by the old aristocracy to sale for debt, and he believes that for a long time to come such liability should be effectually limited. That the popularity of the British Government greatly depends on the introduction of some measure of protection, is a proposition so generally conceded that it is almost unnecessary to urge anything regarding it; but it may not be out of place to quote the opinions of one or two of the experienced officers whom the Officiating Chief Commissioner has consulted.

Mr. Bernard, Commissioner of Nagpur, writes—

"I venture to offer my opinion that it would be an excellent thing for all parties connected with land, and also a most politic measure for the British Government, if the law for land sale were altered, and if money decrees could no longer be executed by the sale of landed property."

Captain Brooke, Deputy Commissioner of Seoni, also adverts to this point as follows :

> "And the cause of this feeling is not far to seek: by Hindoo law the right of the occupant is always limited by those of the sons, grandsons and other heirs of the blood, who are declared to possess an interest in ancestral property equivalent to that of the incumbent, hence alienation is not possible or legal.
>
> "This is the feeling with which the Hindoo mind is imbued, and regarding it as both law and religion, it is no wonder they feel strongly."

9. The question how far it may be eventually for the interests of the country that land should not be liable to compulsory sale for debt is one of more complexity. It may be readily conceded that the free salability of land is an advantage to a people among whom it obtains when they have become accustomed to it, and the buyers and sellers are of the same class, but this is not the question at issue. What we have to decide is whether in the present state of this country the law of land sale ought to be changed *suddenly and at the risk of producing social revolution.*

Colonel Keatinge is most strongly of opinion that this ought not to be. The course of recent legislation in England may serve to teach us that liberty to contract is not a panacea for social evils at every period of a nation's history, and Colonel Keatinge is quite sure that it is not in the present state of India.

10. In this country every Hindoo institution tends to become hereditary, and the sentiments of the people favour perpetuities. The tendency of our civil courts in their mode of dealing with land is to take no account of these ingrained feelings, and to run contrary to the moral sense of every class of the population, except those who are direct gainers by their action, and in the Central Provinces, as in some other parts of India, the latter are not the people of the country. The worst of the case is that the change has come upon the people *suddenly and before they are prepared to meet it.* We have hitherto done but little to bridge over the interval between the old state of things and the new. Had we waited till education had prepared the landed classes for the altered circumstances of the time, the result might have been different; but as the case now is, we have to acknowledge that wherever our rule extends a blight falls on the old aristocracy of the land. They are traditionally improvident, but improvidence has meant ruin to them only since we have declared that it should do so. Formerly debt was at worst only a passing calamity. Can it be doubted that a change so vitally important should be introduced slowly and cautiously, and that its sudden introduction must inevitably bring disaster to the influential, though ignorant and improvident, classes whom it affects?

11. Again it is worthy of note that not only is our system of law inimical to the ancient possessors of land, but it is administered by officers who though in individual cases sympathising with the old families

whom they see going to ruin about them, are yet, on the whole, hard exponents of the radical doctrines of Western political economy. Had it been otherwise, it could scarcely have happened that some safeguards against the alienation of ancestral land should not have arisen in connection with a system of law which makes the son "the partner of his father by the mere fact of his being born", and prohibits the father from alienating ancestral property, except under stress of over-powering necessity.

12. In conclusion, Colonel Keatinge would solicit special attention to the remark made by the Commissioner of Nagpur, which applies almost with equal force to the rest of the Province, that if the law is ever to change in support of the landed interests, such change, if it come now, would produce less disturbance, and bear less the appearance of injustice than at any future time. In fact, in a great number of districts, where settlements have only been recently concluded, there will be no change at all; land could not be sold for debt before the settlement, and this same state of things will now be continued.

Memorandum on the working of Sections 243 *and* 244 *of the Civil Procedure Code by* P. S. MELVILL, *Esq., Officiating Judicial Commissioner, Central Provinces.*

THE annexed statement shews the number of cases in which land has been subject to the action of the civil courts in realizing decrees for money in these Provinces during 1868 and 1869. The statistical registers maintained in the courts do not afford the information demanded by the enquiry of the Government of India, and it was therefore necessary that the records of each case decided should be examined. With regard to the great labour involved in this operation, I restricted the collation of statistics to the years 1868 and 1869, and so much delay has occurred in their rendition that the last district report was only received by me on the 6th instant.

2. Section 205 of the Civil Procedure Code declares that lands are "liable to attachment and sale in execution of a decree". But this section is subject to the proviso that "no ancestral property in land shall be sold in satisfaction of a decree without the sanction of the Judicial Commissioner, and before acquired property in land shall be so sold, the permission of the Divisional Commissioner shall be obtained" (Notification No. 447, dated 28th October 1862, by the Government of India).

3. Section 243, with a view to preventing the sale of land, allows—

(*a*) attachment of the land and appointment of manager, with a view to the payment of a decree from the profits;

(*b*) The postponement of sale in order to allow the debtor time to arrange privately for the amount of the judgment;

and Section 244 permits of (c) temporary alienation of the land, on the representation of the Collector, and on "security for the amount of the decree or for the value of" the land being given.

The statement annexed begins with the number of sales, and then exhibits the results under the different headings above specified, with an additional column for those cases of temporary alienation in which the procedure of Section 244 was not followed. I will now go through the statement.

4. Column 3—"Number of cases in which land was sold in execution of decree".

				Cases.
1868	...	...	...	209
1869	...	...	...	227

In 12 of the 19 districts of these Provinces no sales occurred in 1868, and in 11 districts no sales occurred in 1869. The figures for the districts in which sales took place are as follows:

District		1868		1869
Nagpur	...	0	...	8
Wardha	...	0	...	5
Balaghât	...	0	...	1
Jabalpur	...	1	...	1
Sagar	...	202	...	203
Damoh	...	1	...	2
Seoni	...	1	...	0
Hoshangabad	...	1	...	0
Narshinghpur		3	...	6
Nimar	...	0	...	1
Total	...	209		227

Thus, excluding the Sagar District, there were only seven cases of sale in 1868 and 24 in 1869. The figures for the Sagar District are very incomprehensible, and I regret that the explanation given by the Deputy Commissioner, which I proceed to extract, is by no means conclusive. Were it not that so much time has already gone by, I should call for further information. "As regards column 3, no malguzari land has been brought to sale in order to the realization of a civil decree. The nature of the sales of land effected with that view will be gathered from the following: For instance, a garden was sold of the description of a private flower, and vegetable garden attached to a dwelling-house, the profits accruing from which were not such as to admit of payment of the decree in any other manner". It is not easy to understand why such a quantity of land of this description should have been available for sale in one district alone. But one thing appears to be clear, namely, that the number of sales of revenue-paying land in these Provinces has heretofore been very small, though, judging from the applications

which are constantly being received, it will be found to have increased in 1870. And there appears to be no doubt that the tendency to sale will be seen to increase year by year if the views that have been heretofore held on the subject are allowed to continue. But of this more will be said hereafter.

5. Column 4—"Number of cases in which land was attached and placed under a Manager under the first part of Section 243":

District.		1868		1869
Balaghat	...	0	...	2
Jabalpur	...	13	...	10
Sagar	...	13	...	19
Damoh	...	0	...	2
Seoni	...	0	...	1
Hoshangabad	...	10	...	0
Total	...	36	...	34

Regarding the two cases in Balaghât, the Deputy Commissioner reports—"one was settled between the parties after the land had been in the hands of the Manager but a short time, the other is the Bhanpur zemindari, which has now been nearly two years under a manager, and the result has been the reduction of the interest bearing debt from about Rs. 9,000 to Rs. 4,000".

The Deputy Commissioner of Jabalpur alludes to these cases as cases of temporary alienation, and it is probable that the land has been made over to the decree-holder for a series of years to "manage", as is declared to be the fact in the Sagar District in these words extracted from the Deputy Commissioner's report: "Zemindari holdings, and the lands of Asami Maurusis have, on account of the poverty of such class of debtors,—which fact precluded the possibility of the debt on the decree being otherwise realized,—been attached, and placed in the hands of one deputed by the court, who has invariably been the decree-holder, and to whom the charge of the estate has been made over by dispossession of the debtor, and under the condition that the jamma or rental, as the case might be, should first be paid, and the balance credited to the debt on the decree. No special manager has been appointed".

In Damoh and Seoni the result of the management is said to have been successful. In Damoh the patwari was appointed manager under the supervision of the Tahsildar on a small percentage on the amount collected. It is doubtful whether this arrangement is altogether commendable, but at all events it is not opposed to the provisions of Section 243. And as regards the ten cases in Hoshangabad, the Deputy Commissioner writes that "the procedure of Section 243 cannot be said to have been followed. The Collector on a requisition from the civil court simply directed the patwaris to pay over the profits accruing from the land or village to the plaintiff. For this purpose the patwari was vested with no special powers, and received no remuneration as a regular manager of the estate".

I apprehend that it is not the intention of Section 243 that the decree-holder shall be appointed manager. It is obviously inexpedient in the majority of cases that such an arrangement should be made, though perhaps where the property is of small value, and the measure is carefully watched, it may be of advantage to the judgment-debtor. But it has been sufficiently shown that the action taken by our courts, except in the Districts of Damoh and Seoni, has not been in accordance with the law, inasmuch as accounts of receipts and disbursements have not been taken from the manager.

6. Column 5—"Number of cases in which sale was postponed under the latter part of Section 243, decrees realised without sale of land".

District.		1868		1869
Nagpur	...	2	...	5
Wardha	...	0	...	3
Balaghât	...	1	...	0
Jabalpur	...	0	...	1
Damoh	...	8	...	25
Seoni	...	1	...	1
Betul	...	0	...	1
Narsinghpur	...	1	...	7
Total	...	13	...	43

Column 6—"Sale of the land enforced" being blank shows that the operation of the latter part of Section 243 was successful.

Column 7—"Number of cases in which land was temporarily alienated". Procedure of Section 244 followed.

Under this column only three cases appear belonging to the Wardha District. The Deputy Commissioner explains that in one of these cases "sale was applied for by the civil court, but the Collector recommended alienation for seven years, which was accordingly had recourse to".

"The success of the measure cannot be ascertained as only one year has elapsed; but there can be no doubt on the subject as the decree was for Rs. 196-9-6, and the jamma of the land alienated was Rs. 105 per annum."

On this I would remark that the terms seem to be particularly oppressive on the debtor. In regard to the other two cases, the Deputy Commissioner says that "the procedure under Section 244 was followed, and the measures were successful, inasmuch as both decrees were satisfied without the necessity of having recourse to sale".

7. Column 8—"Number of cases in which land was temporarily alienated". Procedure of Section 244 not followed. Here there is a comparatively long array of figures :

District.		1868		1869
Nagpur	...	5	...	7
Wardha	...	1	...	0
Balaghât	...	0	...	2
Jabalpur	...	0	...	1
Sagar	...	13	...	23
Damoh	...	21	...	23
Betul	...	1	...	5
Chhindwarra	...	1	...	0
Hoshangabad	...	9	...	6
Narsingupur	...	97	...	19
Total	...	148	...	86

The following extracts are given from the Deputy Commissioner's reports :

Wardha.—"The judgment-debtor had no property other than two fields. The civil court ordered them to be made over after attachment to the decree-holder, until the decree should be satisfied."

Sagar.—"Lands held by Asami Maurusi and sub-proprietors and estates, and lands of zemindars have, without submission of any form to the Collector, and after a full consideration of the profits accruing from such, also after deducting the Government demand thereon, from which the period of time which it would require to pay off the debt on the decree has been computed, been attached and made over for the term thus computed, by dispossession of the debtor, to the decree-holder, the holding for the term specified being considered as affording absolute freedom on the part of the debtor from any further demands on account of the decree (relative to which such order has been passed by the court) and the expiration of the term placing the debtor in the same position regarding his land as he occupied previous to the issue of such order."

Hoshangabad.—These "were cases in which the Collector on a requisition of the civil courts" to attach the profits of the land on village "of his own motion recorded an order putting the plaintiff in possession until such time as his decree should be satisfied".

Narsinghpur.—"The procedure followed in this district hitherto has been this—The civil courts being satisfied that the amount of decree could be realized within a certain period by a temporary alienation of the land in favour of judgment-creditor, issued the necessary orders, and sent intimation to the Deputy Commissioner for the necessary transfer. Possession of the land was then made over to the judgment-creditor through Tahsildars by order of the Collector."

Now in all the cases in the Sagar, Hoshangabad and Narsinghpur Districts, about which full information has been given in the above extracts, and probably in all the cases appertaining to the other districts about which no explanation has been given, it appears that independent action has been taken by the Collector (Deputy Commissioner) that the transferree has been usually the decree-holder, and that security has not been demanded. In many instances it is believed that the land has been made over to the decree-holder for an indefinite time, or until the realisation of the decree. There is nothing illegal in making the temporary transfer to the decree-holder, but otherwise the action of the courts has been irregular, though no doubt it has been beneficial, except where the transfer has not been for a fixed period and on the condition that the transfer should absolutely cancel the decree, no matter whether the full amount was realized or not, in cases where the transfer has been to the decree-holder. The great reduction in the number of cases in 1869 in the Narsingpur District is not accounted for.

8. The total number of cases which regularly or irregularly are classed under the operation of Sections 243 and 244 are—

1868	197
1869	166

In the following districts there have been no land sales, and no interference with land under the two sections in the two years under report, and probably not before :

Nagpur Division ...	1 Bhandara. 2 Chanda. 3 Upper Godavari.
Jabalpur Division ...	4 Mandla.
Chhattisgarh Division ...	5 Raipur. 6 Sambalpur. 7 Bilaspur.

9. On receiving a copy of the letter of the Government of India No. 1718, dated 22nd September 1870, from the Secretary to the Chief Commissioner, it struck me that the report called for might have some connection with an application made about a year ago by the Government of the Punjab for a legal measure prohibiting the sale of land in execution of decrees; and in calling on Commissioners and

Deputy Commissioners for their reports, I added that "opinions are requested as to the effect of Sections 243 and 244 on the sale of land under civil decrees, whether beneficial or otherwise, and as to the necessity for any alteration of the law". If I am incorrect in this surmise, the present opportunity seems nevertheless favourable for discussing the general question.

10. Only five Deputy Commissioners have expressed an opinion regarding the benefit of Sections 243 and 244 to those affected by them, and their opinions are in the affirmative. There can, I think, be no question that these sections have, so far as they go, a good tendency.

11. The Deputy Commissioner of Damoh (Captain Grace) considers that the working of these sections would be more successful if the courts had discretion to postpone sale irrespective of the application of the decree-holder or the Collector; and the Deputy Commissioner of Narsinghpur (Captain Plowden) advocates the addition of a clause empowering the court to appoint the decree-holder as manager under Section 243. With regard to these recommendations, I would observe that courts can take the initiative in appointing a manager, and that it seems, as already stated, to be highly undesirable to allow the decree-holder to be installed as manager; that it certainly does appear to be advisable that the courts should have the power of taking the initiative in postponing sale under the latter part of Section 243; and that the Collector should have power to act under Section 244, irrespective of the courts, whether the case goes before him on the recommendation of a court for temporary transfer, or whether it passes through his hands (as in these Provinces it does) on its way to the Commissioner for sanction to sale of the land. I also think that the condition about security in Section 244 should be omitted.

12. The question, however, of vital importance is whether lands should be saleable by decree of court in satisfaction of judgment.

13. I would premise my further remarks by stating that I recorded my opinion in favour of the retention of the sale law in the Punjab in 1870, and as what I wrote was probably sent to the Government of India with the other papers connected with the proposed alteration of the law, it is necessary that I should guard myself from the appearance of inconsistency by explaining that although I did and do hold that land should not be exempt in that territory from sale in execution of decree on the ground that it has not been exempt during our rule, and that consequently advances have been made on the implied security thereof, yet the circumstances of the Central Provinces are exceptional, and offer a fair field for the introduction of a measure which must be politically safer, and will probably work no injury under the existing constitution of Native society.

14. The Deputy Commissioners, Jabalpur, Chhindwarra, Nimar, and Betul, and the Commissioner of the Narbada Division (Mr. M. Low) are of opinion that no alteration of the law is necessary; but Captain Brooke (Deputy Commissioner of Seoni), Mr. Beddy (Deputy Commissioner

of Bilaspur), Mr. J. Nicholls, Assistant Commissioner of Jabalpur, and Mr. C. Bernard, the Commissioner of the Nagpur Division, have written fully and effectively in favour of a measure which shall save ancestral lands from auction. Indeed Mr. Bernard would exempt all lands, ancestral or acquired, from compulsory sale by the civil courts. I commend the papers written by these gentlemen to the notice of the Chief Commissioner.

15. It is a notorious fact that the proprietary right in land in the Central Provinces was conferred by the Government at the time of the settlement. The persons on whom the land was conferred were, generally speaking, those who had by long possession acquired a claim to the consideration of Government, so that the existing proprietors are, in the full sense of the word, "ancestral". After the Government of the North-West Provinces had in 1854 notified its determination to confer the proprietary right in the Sagar Division "on such person or persons as may, from ancestral right, or long possession, or both, have the best claim" thereto, it issued a proclamation, dated the 16th August 1855, notifying the conditions under which the land so conferred would become liable to be publicly sold for private debts; and in its covering letter No. 1741, dated 16th August 1855, to the Secretary, Sadar Board of Revenue, North-West Provinces, it explained (paragraph 2) that "the rule is that property will be conferred at the settlements, subject only to the condition generally of liability to sale on account of debts contracted subsequently to the date of settlement".

There were* further rules laid down in the proclamation providing that creditors might apply to the settlement officers for an adjustment of their debts; that the settlement officers might fix yearly instalments for their liquidation; and that if the debtor failed to agree to this adjustment, or to pay the instalments, the land would be liable to sale; but these rules were cancelled by an order of the Government of India, which is quoted in Settlement Circular D of these Provinces (paragraph 15) out of which I have no further information.

* See Settlement Selection No. 27.

16. The Deputy Commissioner of Chanda, with reference to the blank statement he has submitted, says—"It should be explained that the settlement is only just completed in the "Chanda District, and that until the completion of the settlement there was the doubt whether any judgment-debtor had any saleable property in the land", and no doubt the same remark is applicable to the whole of these Provinces.

17. It is a fact that a considerable, if not the greater, proportion of decrees in satisfaction of which land has been, and is being, sold, are on account of debts contracted long before the settlements.

In some districts, and notably in parts of the Sagar and Narbada Divisions, where the settlements are of oldest date, debts have been contracted since the settlement, and many of these will not be paid without recourse to the civil court and the issue of the extreme process of sale,

and it might perhaps be thought equitable not to protect the land from sale in such cases; but in regard to debt contracted before the settlement, and henceforward, I would strongly advocate that land be exempt from sale in execution of civil decrees for debt.

18. I would not make any distinction between ancestral and acquired land. Land that has been acquired is not likely to be brought to the hammer during the life-time of the acquirer, who would generally be a well-to-do man, and land that a man inherits from his father is no longer acquired, but ancestral.

19. The officers above-mentioned who have written in favour of exempting land from sale have pointed out the antipathy entertained by the land-holding classes to the sale of land in execution of decree, and there can be no hesitation in saying that those classes have an ingrained abhorrence of the alienation of their estates based, in the case of the Hindus, on their religious feelings and laws.

20. Politically the extensive transfer of land by order of court works evil to the Government. The old men rarely lose their influence over the agricultural population, and those newly made do not acquire strength that may in a time of need be used for the support of the Government.

21. If land is exempted from sale in execution of civil decree it would seem to follow that it must also be exempted from attachment and the minor processes contemplated in Sections 243 and 244, and those sections would, therefore, have no applicability.

22. If, however, the law is to stand generally as it is at present, it remains that I should refer to the practice of the courts of the Commissioners and the Judicial Commissioner in regard to sanctioning the sale of acquired and ancestral land respectively.

23. In my opinion the *proviso* above quoted, under which Act VIII. of 1859 was brought into force in the Central Provinces, gives full power to the Commissioners to disallow the sale of acquired, and to the Judicial Commissioner to disallow the sale of ancestral, landed property. And therefore I think that it does not follow that "if a judgment-debtor has no other property, his land must be either alienated for a sufficient time or sold", or that "when cases of the kind are reported to the Judicial Commissioner option rarely exists, sale has to be sanctioned almost as a matter of course" (paragraph 37 of the civil report, Central Provinces, for 1869). With every respect for Major Mackenzie, the writer of that passage, I would hold that the Judicial Commissioner would exercise a proper discretion in not sanctioning sale of land for a debt, which had been contracted prior to the settlement, upon the principle that when the debt was contracted the obligee had no eye to the security of the land; similarly, where the amount of the decree was small, say under Rs. 50 or 100, I would not sanction the sale of land at all, nor would I sanction sale where the decree is large, and the probable realisable value of the land is so small as to form a hardly appreciable proportion of the decree, for in such a case the decree-holder is barely benefited, and the debtor is ruined to no good purpose.

Statement showing the working of Sections 243 *and* 244 *of the Civil Procedure Code with reference to sales of land in the districts of the Central Provinces for the years* 1868 *and* 1869.

1	2	3	4	5	6	7	8	9
DISTRICT.	Year.	Number of cases in which land was sold in execution of decree.	Number of cases in which land was attached and placed under a manager under the first part of Section 243.	Number of cases in which sale was postponed under the latter part of Section 243, with a view to the realization of the amount of the decree by mortgage, lease, or private sale of a portion of the land.		Number of cases in which land was temporarily alienated.		REMARKS.
				Decree realized without sale of the land.	Sale of the land enforced.	Procedure of Section 244 followed.	Procedure of Section 244 not followed.	
Nagpur ...	1868	...	...	2	...	...	5	
	1869	8	...	5	...	...	7	
Bhandara ...	1868	...	...	...	...	...	...	
	1869	...	...	...	...	...	...	
Chanda ...	1868	...	...	...	...	...	...	
	1869	...	...	...	...	...	...	
Wardha ...	1868	...	...	...	...	...	1	
	1869	5	...	3	...	3	...	
Balaghât ...	1868	...	...	1	...	...	...	
	1869	1	2	...	...	...	2	
Jabalpur ...	1868	1	13	...	...	...	...	
	1869	1	10	1	...	...	1	
Sagar ...	1868	202	13	...	...	...	13	
	1869	203	19	...	...	...	23	
Damoh ...	1868	1	...	8	...	...	21	
	1869	2	2	25	...	...	23	
Seoni ...	1868	1	...	1	...	...	...	
	1869	...	1	1	...	...	...	
Mandla ...	1868	...	...	...	...	...	...	
	1869	...	...	...	...	...	...	
Betul ...	1868	...	...	...	...	...	1	
	1869	...	...	1	...	...	5	
Chhindwara ...	1868	...	...	...	...	...	1	
	1869	...	...	...	...	...	...	
Hoshangabad ...	1868	1	10	...	...	...	9	
	1869	...	...	...	...	...	6	
Narsinghpur ...	1868	3	...	1	...	...	97	
	1869	6	...	7	...	...	19	
Nimar ...	1868	...	...		...	...	...	
	1869	1	...	...	...	...	...	
Raipur ...	1868	...	...	...	...	...	...	
	1869	...	...	...	...	...	...	
Sambalpur ...	1868	...	...	...	...	...	...	
	1869	...	...	...	...	...	...	
Bilaspur ...	1868	...	...	...	...	...	...	
	1869	...	...	...	...	...	...	
Upper Godavari District.	1868	...	...	...	...	...	...	
	1869	...	...	...	...	...	...	
Total ...	1868	209	36	13	...	...	148	
	1869	227	34	43	...	3	86	

No. 206, dated the 20th January 1871.

From—C. E. BERNARD, Esq., Commissioner, Nagpur Division.

To—The Registrar, Judicial Commissioner's Court, Central Provinces.

THE district replies to your circular No. 23—778 (sale of land in execution of decree and procedure under Sections 243, 244 of Act VIII.) having been from time* to time laid before you, I have the honour to submit a short report upon the points named in the last clause of paragraph 2 of your circular.

* Nagpur on the 19th December 1870.
Wardha do. 5th January 1871.
Bhandara do. 28th November 1870.
Chanda do. 25th November 1870.
Balaghât do. 16th December 1870.
Upper Godavari District, 25th November 1870.

It will have been seen from the entries in column 3 of the statements that until the year 1869 the sale of land in execution of decree was unknown. Even now in the Upper Godavari and Chanda Districts, where the land revenue settlement has only just been finished, no sales of land in execution of decree have yet occurred. Since 1869 the number of sales has increased, and now nearly every number of the *Central Provinces Gazette* contains one or more notices of impending sales of landed property in this division. It is true that sales do not always take place as notified; for the reality of an impending sale often drives a debtor to borrow elsewhere, or to come to his creditor's terms. But still the number of executions against landed property and the number of consequent sales is rapidly increasing in parts of this division.

3. In regard to Section 244 and its working, I concur in Captain Bloomfield's opinion that action under this section can seldom be taken. Security for payment of the decree *must* be forthcoming if proceedings are to be taken under that section. And ordinarily any man, who can procure good security for payment of his decree, will not trouble the Collector or the court to act under Section 244.

4. Under Section 243 proceedings can be and are more often taken. But ordinarily it is only in cases where the presiding officer or the Collector makes special effort to save some landholder or some family from ruin that successful action is taken under this section. In the case of petty decrees (say up to Rs. 500 or so) it will rarely pay to engage a manager and to go through the procedure enjoined by Section 243.

5. Captain Bloomfield observes that it would be well if the law laid down more expressly to whom a manager, appointed under Section 243, should render his accounts. But it seems to me that the law very rightly leaves the matter to the discretion of the court, and when courts come to act more frequently under Section 243 they will doubtless be careful to provide for the managers rendering proper accounts. During the last year I sent back one or two execution of decree cases with instructions for the court to make directions for the manager rendering due

and proper accounts of his management. As Colonel Waddington says, the courts often omit to mention the section under which they take proceedings, and one consequence of such omission is that the courts fail to remember or to carry out all the requirements of the section under which their proceedings are really legal.

6. It may be well to mention here that one reason why applications for sale of landed property in execution of decree are so frequent is that the courts rarely take advantage of Section 194, and order that decrees shall be payable by instalments. During the year 1870 I examined the proceedings of the lower courts in several hundreds of cases, and I do not remember to have seen a dozen decrees in which instalments were allowed. When decrees are payable in one lump, and when execution is taken out at an inconvenient season of the year, of course an ordinary rural judgment-debtor (probably a ryot occupying some 30 or 40 acres) cannot possibly liquidate at once in full; and so either his landed rights are sold up, or else he is driven to accede to exorbitant terms on which the creditor may be ready to renew his loans.

7. The upshot of these statements and reports appear to be that in these parts until recently neither creditor nor debtor ever thought of landed rights (proprietary, occupative or other) being sold up in execution of civil decrees. But now that all rights in land are more or less defined, that pleaders are plentiful, and the provisions of the law are more generally known, the execution of decrees by sale of debtor's landed property will become frequent. Section 244 will rarely suffice to prevent such sales. And even under Section 243 sales will only be prevented in special cases where the landed property is large and valuable; or in districts where the Collector is peculiarly active and specially willing to keep his landholders and ryots from ruin. Any Collector who may thus desire to be a sort of providence for the proprietors and ryots of his district will have to spend much time and labour on the work if he is to do it effectually. And it is questionable whether many of our Deputy Commissioners in the larger districts have time for such duties.

8. I am not sure if your circular permits me to offer a general opinion on (what Mr. Kaye and others call) the law of land sale. But as you enquire whether we think any change in the law on this matter is needed, I venture to offer my opinion that it would be an excellent thing for all parties connected with land, and also a most politic measure for the British Government, if the law of land sale were altered, and if money decrees could no longer be executed by the sale of landed property.

9. I think it could be easily shown that in this division at any rate money debts could not be realised by the enforced sale of the debtor's landed property, and that nearly all the debts and engagements which our courts have decreed during the last few years were contracted on terms* which adjusted themselves in view of the unsaleability of the debtors' landed rights. If, therefore, the law is ever to be

* Terms, that is in respect of interest, repayment and discount, at the time the loan or engagement was contracted.

changed, such change, if it came now, would do less actual injustice to creditors than it would do at any future time.

10. I do not think there is now any need to offer evidence in proof of the extreme distaste with which all members of the rural community view the law, whereby their ancestral lands and landed rights are liable to be sold up for money debts. The North-Western Provinces district reports, written in 1858 regarding the mutiny, did, I believe, offer many instances of the bitterness of the people's dislike to the land sale laws. In these parts the law of land sale has only just begun to operate; but so far as I can learn, some of the people (especially the larger landholders) are already beginning to shudder at its working.

11. I fear that in this division the land sale law will, if it has its way, work with special hardship. Most of the money lending of these parts is done by Marwaris,* who are very enterprising men of business, but who are particularly hard and unyielding in their dealings with the people. They are in no way affected by any local opinion or local custom; they will take the "pound of flesh", or whatever else the law many give them, with the utmost rigour.

* This is the local name given to dealers, merchants, money-lenders of Vaisya caste (usually of the Jain persuasion) who come from Marwar, Bikanir and other parts of Rajputana.

12. If it is conceded, as I believe it must be conceded, that the law* of land sale is not indigenous to this part of the country, that the great mass of the people connected with the land would rather be without any such law, and that its introduction and operation may make the British disliked by the most important section of its subjects, the question naturally arises why should such a law be introduced at all. So far as I know, the only answer which could be given is because it obtains† in other parts of British India, because it obtains in the civilised world, because political economy requires it, and because nobody will lend money to landholders unless the land is in the end the security for its repayment. Perhaps the only one of these grounds which in the face of the points conceded above require consideration is the argument that people will not be able to borrow money on reasonable terms if their land is not saleable for their debts. But hitherto people have been able to borrow money in these parts at least as readily as was good for them even before the law of land sale was introduced. So far as we can judge, people (at any rate the landholding classes) are able to borrow money very easily, though the interest charged on money is high. The action of our courts is tolerably certain, so far as the money-lender is concerned; and we see on all sides ryots or petty landholders habitually borrowing and spending sums equal to two, three or six years' income for a single marriage or betrothal. Every one of us must be able to recall scores of cases in which

* I mean the law whereby land can be sold in execution for money debts.

† It does indeed obtain in the North-Western Provinces where, as above mentioned, it bore bitter fruits. In the ryotwari countries of Madras and Bombay the law of land-sale is in practice much modified by the land tenures and its laws.

it would have been much better for a ryot or a landholder that he should not be able to borrow large sums of money quite so readily. For generations almost Anglo-Indian and Hindu reformers have set before themselves and the public the great necessity for reducing the outlay on marriages and other ceremonies. Yet we all know that a great part of all the money spent on marriages is borrowed by the landed classes, who, under the land sale law, will be more than ever able to borrow and spend out of all proportion to their necessities. The consequence then of making the money market a little tighter for the landholding classes may thus be in some measure for their essential advantage.

13. I apprehend there must be in India very many European and Native officers who would desire to see the land sale laws modified. Of course if any modification were to be made, questions in regard to mortgages, private sales, and sales for arrears of Government revenue might be raised. But if it were once decided that the land sale law should be modified in the direction of the many protests and suggestions which have come from Natives and Europeans in many parts of India, such questions would not be impossible to solve.

14. I must apologise for thus offering a long expression of opinion in reply to your circular, which only invites opinion on the working of certain section of Act VIII. But the drift of your circular seemed to show that in some quarters a desire might exist to strengthen the provisions which were intended to lighten the severity of the land sale law. And if any such desire exist, it seems well to point out that, in the long run, those provisions temper the harshness of the law; and to submit that after all it may be the best and wisest course to protect the landed classes thoroughly by doing away with the land sale law altogether.

No. 177, dated the 23rd January 1871.

From—Captain W. S. Brooks, Deputy Commissioner, Seoni.

To—The Commissioner, Jabalpur Division.

I have the honour to forward the tabular statement prescribed by the Judicial Commissioner's Circular No. 23—778, dated 11th October 1870.

2. You will observe that during the years 1868 and 1869 only four cases occurred, in which lands were attached in execution of decree under the provisions of Section 205 of Act VIII. of 1859.

3. In one instance the property came to the hammer and was finally alienated; in a second the land was sequestrated for fifteen years and placed under a manager, the court acting under the first part of Section 243; and in the two remaining cases, after attachment had been effected, the judgment-creditors' claims were satisfied by private arrangements.

4. The one case entered in column 4 has been so short a time under management that it would be difficult to form any decided opinion

as to the success of the measures adopted; still during 1870 the management has worked smoothly, and up to the present has given no sign of failure.

5. Obviously it would not be possible to frame any reliable deductions as to the working of the law in this district from the scanty data available; nor is my experience so extended as to justify me in giving any independent testimony.

6. On the general question whether the effect of Sections 243 and 244 on the sale of land is beneficial or otherwise, and as to the necessity for alteration of the law, I may be permitted to offer the following remarks.

7. I must begin by tracing the course of legislation on an analysis of the law as it actually exists, as the inference to be drawn has a strong bearing on the opinion I propose to offer.

8. The law then stand as follows:

1st.—It authorises the attachment and sale of all property, including land in execution of decree,—*vide* Section 205.

2nd.—Next in Section 243 it modifies the wholesale declaration of Section 205, by allowing the court to undertake the management of land (and some other kinds of property the utility of which is plain) and from its profit redeem the debt. To be consistent it might as well assume charge of bankers or buniyas business and trade on their account.

3rd.—Further on, in the same Section 243, it sanctions the sale subsequent to attachment to be postponed, affording thereby an opportunity to the judgment-debtor to arrange privately for the liquidation of the amount of the decree—a procedure that in many instances saves the land to the debtor, or at least obviates the compulsory sale by court.

4th.—In the case of land paying revenue to Government, it permits the interference of an official to prevent the sale of such land, if it can be shewn that by a temporary alienation the claim can be adjusted.

Again in certain parts of the Empire, notably in the Punjab, Oudh and Central Provinces, a further restriction is placed on the action of the courts in regard to the sale of land by requiring, in the case of acquired property, the sanction of the Revenue Commissioner, and in the case of ancestral lands, that of the chief judicial authority to be obtained previous to the sale.

9. Now what would this seem to indicate? Certainly a tenderness or disinclination against subjecting land, attached by order of a civil court, to the same rule or law that governs the tribunals when dealing with property of other kinds.

10. A still more advanced step in the same direction is Act XXIV. of 1870. (To relieve from encumbrances the estates of talookdars in Oudh.)

Here the Legislature has entered the gap, and for one province and a certain class practically annulled the laws relating to the attachment and sale of land by constituting itself the judgment-debtor and one of whose solvency there can be no doubt.

The political reasons for such action are not in discussion here, but the almost direct bearing of the Act on what I may designate the common law in reference to sales of land in execution of decree has much interest in shewing the tendency of legislation.

11. We have evidence then I think, strong in its character, to show that the leaning is to preserve the land from the ordinary operations of the civil courts.

12. Whence the origin of this tenderness, so different from the action of the British Parliament dealing with the case of encumbered estates in Ireland. There, broadly speaking, the object was to facilitate the action of the courts in promoting the transfer of land.

In India from Section 243 of Act VIII. of 1859 to Act XXIV. of 1870 the tendency has been in the opposite direction.

13. I would then trace this tenderness to a conviction pervading the minds of the responsible legislators that certain circumstances were present in the political fabric which induced them to place some restriction on the laws which govern circulation of capital and exchange of wealth.

14. But how did such an impression arise? How has the pure water of economical truth and theory been thus coloured? Simply, I should say, by the concensus of opinion flowing in from all sides, that the mind of the people for whom we legislate was by no means prepared for free trade in land, that conditions existed in the body social which rendered it at least unadvisable to permit ancestral acres to fall away from their original owners.

15. The influence thus at work on the Legislature must have been in no way slight, and I would adduce the result as a proof of the popular feeling of the nation on a subject where we have no direct representation to guide us.

16. Thus supported by the tendency of imperial legislation, or, as I would rather express it, by the effect of national ideas on that legislation, represented chiefly by the opinion of experts, I would venture to add, with what force I am capable of, my views as to the great inexpediency of compelling the sale of lands in execution of decrees for debt.

17. My reasons for this opinion may be asked. I answer they are grounded on certain experience and observation which lead me to conclude that in the existing state of society and mental advancement the compulsory sale of land is regarded, to say the least, as extremely distasteful and unjust, and opposed to the law and religion of a civilized

community, who were even as we see them with complex codes and polished manners when Alfred burnt the cakes at the cowherd's fire.

18. And the cause of this feeling is not far to seek. By Hindu law the right of the occupant is always limited by those of the sons, grandsons and other heirs of blood, who are declared to possess an interest in ancestral property equivalent to that of the incumbent, hence alienation is not possible or legal.

19. This is the feeling with which the Hindu mind is imbued; and regarding it as both law and religion, it is no wonder they feel strongly.

Conceding this, it behoves us as foreigners to act for the country as the Natives would do if left to themselves on a matter not repugnant to morality and good sense.

20. That grave and serious arguments of course exist against this view of the case cannot be denied, but it is necessary to weigh objections, which have their origin in the rules of a fairly exact science, against the innate convictions of a people, however incapable these convictions may be of being brought into strict harmony with scientific truth.

21. If then as I propose that further restriction be placed on the compulsory sale of land by civil courts in execution of decrees for money legislation must be based on Hindu law for Hindus, and questions of detail will arise.

22. These may be broadly treated under the divisions of (1) ancestral, (2) acquired property in land. The first stands out in order of importance.

To property falling under that category my observations would more especially apply.

23. Briefly I will sketch the course I think legislation ought to take—

1.—Ancestral property in land ought only to be susceptible of temporary alienation during the lifetime of the party incurring debt, unless it could be very clearly shown that the debt was a fair charge on the estate for its improvement or benefit; alienation in that case might last until redemption was effected.

In the event of no heirs, natural or legally adopted, to be consistent, the same rule might hold good; although it must be granted that by Hindu law the incumbent has uncontrolled dominion over his property, whatever the kind may be.

2. Acquired property in land, joint or undivided, would however reasonably stand on a different footing. Here no ancestral ties or strong feeling comes in play; indeed it may fairly be presumed that if any feeling existed in the community, it would be rather adverse than favourable to the holder.

This kind of property might then be excluded from the general rule which it is proposed to apply to ancestral property.

24. It would then be necessary to define the term acquired property, and to determine the period after which it would be considered ancestral. In these Provinces such a definition would be easy.

We are all aware of the exhaustive enquiries instituted at the regular settlement into the claims to proprietary right in the soil; generally these enquiries were satisfactory in their nature, and the result acquiesced in by the bulk of the population. Then for the Central Provinces land that has changed hands by decree of court since the conferment of proprietary right might be classed as acquired, all others ancestral. For lands transferred since the settlement by private agreement I would leave it open to the natural heirs to prove their rights in ordinary way. In other parts of India other conditions will present themselves.

25. If this then be accepted as the definition, we shall free our administration from the now common reproach that proprietary right in land was given by one hand only to be taken away by the other. Debt is universally looked on as a passing trouble, while the lands remain for ever.

26. Again I would make no distinction between any class of the community. Some peculiarities of the Mahomedan law of inheritance would seem to indicate that land was regarded by them rather in the light of a transferable commodity than as a goddess "Bhumi" ("mother earth"), neither to be worshipped or cherished, and as little susceptible of alienation as their own bodies. Still the Mahomedans, land-holding classes and cultivators more strongly, are Hindus in their ideas for the most part converted descendants of that race.

On broad points their views differ immaterially, and on the question of land little, if at all. Again the succession laws of Islam working internally and without imported motion from the outside are one thing, and the forced action of the law courts another.

27. I have thus endeavoured to place on record my opinions on the prominent features of the question. I may still be permitted to add my conviction that a measure embodying the principle of non-alienation of ancestral lands would act politically in the happiest way.

28. It would import a comfort and confidence ("thikana") now unfelt, and would more effectually silence the propagators of sedition than a thousand measures of repression.

29. The really sore point in our administrative system is the power of alienating ancestral lands; it is the one blot seen and keenly appreciated by the mass of the population; it comes home to the most distant hamlet and remote village, to places where in my own experience it is the only knowledge of British rule—it is the sword of Damocles that a temporary calamity may cause to fall.

Dated the 13th January 1871.

From—G. J. Nicholls, Esq., Assistant Commissioner.

To—The Deputy Commissioner, Seoni.

The Judicial Commissioner has called for opinions whether the present law respecting the restrictions to the sale of landed property under process of the civil courts in execution of money decrees should be altered or not. The consideration of the entire law regarding the sale of landed estates of necessity arises from the minor enquiry. At your suggestion I have ventured to write some remarks on the subject.

As the law stands no difference is made between inherited ancestral property in land and such as has been acquired by the judgment-debtor. Property of both descriptions is alike liable to attachment and sale, whether it belongs to Hindu, Mussulman or Christian; and under Act VIII. of 1859, at least in the civil court, there is but a slight bar to the decree-holder's proceeding forthwith against valuable ancestral property, even although his decree be for a trivial sum obtained in a Small Cause Court. The Civil Judge and Collector combined may find themselves unable to prevent property, to which the owner attaches a value far beyond its intrinsic worth, being brought to auction, although they may be from various and grave considerations unwilling to see the landed property sold. The tenacity with which a Hindu clings to the land which he has inherited from a long ancestry—a sentiment fostered and sanctioned by his immutable law—seems strange to Europeans, who have for generations regarded land as a marketable commodity, and among whom the changes of the law have ever tended to abolish impediments to its free transfer.

Looking at the text of Section 205, Act VIII. of 1859, indiscriminate sale of land for private debt under the civil court seems to be the recent creation or experiment of foreign legislators evolved out of a Western moral consciousness. There is reason to believe that it is here generally looked on as a gratuitous novelty and as a revolution in the treatment of landed property injurious to the only powerful class of Native society. The history of the mutiny and rebellion of 1857 clearly shows its political significance. But neither sentiment, nor its being distasteful to the bulk of the people, is alone sufficient reason for advocating an entire change of the law. Doubtless the measure was carefully weighed by the Legislative Council before all lands were thus apparently made without reserve liable to attachment and sale. I have not now the advantage of being able to see the record of those deliberations, and can only hazard a conjecture that the Government, when extending the Act to Oudh and to the Central Provinces, felt unwilling to enforce this sweeping clause in these more backward countries, where there lingers in the minds of the peasantry a strong association between the position of hereditary patel with certain duties to be performed by him, derived from a time when he was only the head member of a

See also Notification No. 1225, dated 26th September 1866, of Punjab Government.

co-parcenary, whose consent gave him his position and without whose consent he should not relinquish his position except to another having long connection with them as a body, and who would perform to them an equal amount of duty in their relations with the outside world.

The Act was extended to these Provinces, but subject to this very important *proviso*, "no ancestral property in land shall be sold in satisfaction of a decree without the sanction of the Judicial Commissioner, and before acquired property in land shall be sold, the permission of the Divisional Commissioner shall be obtained". This *proviso* entrusts these officers with a power of placing an absolute *veto* on any proposal whatever for the sale of landed property.

The Government has thus already greatly receded from the high pitch of reform apparently attained in 1859. The compulsory sale under legal process of land, whether self-acquired or inherited, by a judgment-debtor of European or alien descent, could scarcely ever be reasonably regarded by himself as a hardship.

With Mussulmans the case is somewhat different where, in respect of the inheritance and tenure of ancestral land, they do not more or less abide by Hindu law. Their own special system of inheritance is such as almost to preclude the possibility of a small landed estate descending entire beyond a grandson, and it would be capable of transfer by gift or legacy. Thus the alienation of landed property is not foreign to their minds.

But the law would not be upheld or changed to suit the few exceptions; Hindus hold pretty nearly all the lands in these Provinces, and their lands, whether inherited or self-acquired, are now liable to be sold for debt, whether the debt be ancestral or of their own incurring.

With regard to the enforced sale of landed property, which has been acquired by the judgment-debtor, it is to be remembered that by Hindu law he is at liberty to make any alienation or unequal distribution of it among his children, and that men who have been able to acquire landed estates are, as a rule, prudent and possessed of capital and energy sufficient to enable them to retain their acquisitions without incurring debt.

Where a debtor has to pay his own debts and has no son or near heir of the same stock, it would be no hardship if his lands, whether ancestral or self-acquired, were sold for the benefit of his creditors; if he has self-acquired lands and sons, and the land should be sold, it is no hardship. His sons will only have to begin the world again as the father did without landed property.

A widow who holds lands inherited from her husband, where there are left no reversioners of her husband's family, and falls into debt, may well forfeit her lands for her creditors. Where there are near male heirs of her deceased husband's family, they can restrain her from encumbering or alienating the estate. Such cases, however, would probably seldom occur.

Where a man has sons or grandsons and through his own folly or incapacity falls into debt, the Hindu law, maintaining that these have an indefeasible, incohate proprietary right with the father in ancestral property, seems to indicate that only the limited rights of the latter should be available for the liquidation of his debts. It seems a pity that our law regarding the sales of such land should not expressly coincide. In short, it appears wise and just that our laws affecting Hindus should so far as possible coincide with the Hindu law where the latter is not *effete* and fossilized, affording no new and arbitrary license to the temporary occupant of a landed estate to squander it away, or allowing the fault or folly of one individual to be visited on all his descendants. Our law at present seems to disregard their rights and interests; it should clearly protect them to the same extent as the Hindu law, which expressly declares sons from their birth to possess an interest in the family ancestral land, equal to that of the temporary occupant himself. Sons up to the time of the father's death, unless the property has been previously divided, may be well regarded as it were "*in patriâ potestate*" much in the position of minors—wards of the father. Hindu law indeed gives them the privilege of contesting the validity of private alienation of ancestral property in land made by the father, except where the alienation was made by him under necessity or for the preservation of the family credit, just as wards may contest the contracts entered into in their behalf by their guardians. This raises the questions—What is necessity? What is the value of the phrase "family credit"? It would seem that our law of Section 205 wantonly creates a necessity, a stop-gate for ever to the innocent offspring of a spendthrift. What is "family credit"? The civil jail is a place of temporary retirement for gentility for those who have had credit in bad weather. A short time since our late Deputy Commissioner was asking about the pecuniary *status* of one of our large landed proprietors, and was told that he was deeply in debt, and the Native remark "Oh Sir, but then he is a Rais", seemed to show that debt was esteemed a necessary qualification.

Were the text of Section 205 rendered coincident with the spirit of the Hindu law, it would necessarily curtail the present borrowing powers of the occupant of a landed estate. If determined to borrow, he will have to pay higher interest. If his credit be not otherwise good, he will find it difficult to borrow at all; if his object be legitimate, it will be somewhat a hardship to him; if the money be wanted as capital to be applied productively, he will have to share the return to a larger extent than now perhaps with the lender, and thus it may happen that less borrowed capital will be applied to the improvement of the land, notwithstanding that the Government appears anxious to give takavi advances for *bonâ fide* agricultural works of a permanent nature. But there should be this advantage—that the landholding class would be generally more circumspect in borrowing and using borrowed capital, and each landholder would have all the greater motive and necessity to establish a credit independent of his estate and to amass a private capital.

If the object of his loan be selfish luxury or family ostentation, the difficulty of raising the money would perhaps enforce some measure of self-denial, or the day of reckoning being all the earlier and graver, prudence would tell him to make greater efforts to meet or forestall it.

But a landholder may be forced to borrow through the calamity of the season. The same motives should make him provide against such a contingency, and Government has always been ready to take exceptional cases into favourable consideration. It by no means follows that a landholder, who in such circumstances cannot easily borrow, must see his village sold by the revenue court.

I should be heartily glad to see the borrowing powers of landholders greatly restricted. They now seem to make the worst use of a demoralizing and fatal facility for selling or encumbering their family estates nearly up to their full "bazaar" selling value. The late unexpected and somewhat bewildering increase in the value of their proprietary rights has fairly turned their heads. The perpetuity and absolute nature of their tenures under the current settlement has been greatly and perhaps laxly "talked up" to them. The compulsory registration of deeds affecting landed property is generally supposed to afford an implied sanction of Government and of law to any outrageous traffic in ancestral estates. Then the text of Act VIII. seems to allow of the conferring of a perfect title-deed to an auction purchaser. Accordingly landholders seem now to entertain a notion that they can sell and buy and encumber at will; and I fear that ancestral estates are now often sold or accepted under mortgage under mistaken ideas, to the great injury of descendants, and merely to administer to the extravagance of a spendthrift incumbent or to save him the discomfort of retrenchment and self-denial. Thus arises a tendency to improve the patel off the face of the land. Village after village falls into the hands of the city capitalist, call him banker or usurer as you will. The resident yeoman, a born farmer, related to the best of his tenants by ties of kindred and the memory of a thousand acts of kindness, gives way to a non-resident, one who has no inherent knowledge of the management of land or tillers of the land, who sees only with the eyes and hears only from the false tongues of his factors and middle-men whose interest it is to deceive the owner, and wring the uttermost farthing from the cultivators during their short tenure of power. Such a one as Gokuldoss, who cannot tell how many or what villages he owns, or the names of the factors or lessees in charge of each, without diving into his account books, how can he replace the simple patel? he, whose previous relations with the estate and its population have appeared rather antagonistic than otherwise. For it is to be noted that in most cases the creditor himself eventually obtains the debtor's estate.

At first sight it seems a positive gain that an impoverished and imprudent individual or even family should make way for the prudent possessor of capital. In theory this may be right; but passing over the consideration, grave as it is politically, that the sympathies of the people will cling to their old "head man" though poor and degenerate, yet

our experience shows that the capitalist, owning a number of scattered villages, most inadequately supplies to the State the place of a number of yeomen "patels". We have not a few instances in this district which go to prove these men the very worst of landlords, who look to nothing further than the annual return to their coffers equivalent to a heavy interest on their purchase-money, while the villages are rack-rented till they are partially abandoned to rank weeds a dusky edition of "Sweet Auburn". These men are ready to deal in land as a speculation to take the advantages but shun the responsibilities.

The lender will now argue—How can the law refuse to sell the land when the borrower voluntarily pledged it to me as security for repayment of the loan. There seems here to be a confusion of cause and effect. It is only since the settlement that these private sales of land have occurred, and only since the promulgation of Act VIII. that public sales of land under process of the civil courts have been possible. It is only since that time that the shrewd lender has obtained from the more ignorant borrower a conditional deed of sale, a full mortgage of absolute proprietary rights or transfer of a complete estate. Formerly the terms and penalties were comparatively innocuous; if the borrower did not pay, the lender was only to obtain usufructuary possession for the liquidation of the debt. In the case of "Oobaree" lands, where the rights of the landholders are generally supposed to be incapable of sale, the usufructuary mortgage still prevails. Should the back swing of the pendulum strike out the word "lands" as always liable to sale from the text of Section 205, the old usufructuary mortgage will again come into fashion.

The lender urges: "the malgoozar" has no stock of seed grain from which he can make advances to his cultivators; he must borrow from us, or his lands will lie untilled and his estate be sold under the revenue laws; we require the full security of his property. But why is the security of his proprietary rights required? Because the lender has recently seen an enormous increase added, at the expense of the Government, to the value of the estates, and there is still an upward tendency. For this he covets and desires land even more than the immediate return of his principal and interest. Until this wonderful rise in the value of landed property occurred he was quite contented and prosperous under the former conditions. Section 205 has whetted his appetite for land.

Moreover, there is no necessity for him to lend to the improvident man who has no credit independent of his land. It were better probably that the loan should be refused. The cultivators can almost always obtain seed advances from one another, or from their village buniya, independent of the malgoozar. One unsafe and unhealthy field for the employment of the banker's capital would be partly closed to the general benefit of the country.

So long as indiscriminate sales of ancestral land are tolerated or seemingly encouraged, the life occupant of such property has a ready

loop-hole whereby he may evade the restrictions of Hindu law, and can, in collusion with a favourite, procure the transfer to him of ancestral property to the irreparable injury of the rightful heirs.

Perhaps the gravest objections to placing restrictions on the free transfer of landed property would be that a certain stagnation would result; that the land-holding class must deteriorate through the inevitable degeneration of families; that the infusion of new blood and vigour into this privileged body would be rendered impossible. But wars and revolutions have occurred, and will occur again, scourges as they may appear, yet proving the means under Divine Providence and regulation, of purging and renovating society.

But in what way would a man possessed of capital, intelligence and enterprise be thus debarred from the chance of founding a large estate? There is no fear of it yet. Our waste lands will employ all the superfluous capital and energy and intelligence of our agricultural classes for many succeeding generations. No man needs wander far away from his home to find fresh fields for his industry. The present area under cultivation requires the application of much more capital and labour and intelligence on it, and there is, moreover, a field left for their exertion in recovering lands once held by Koormees and Lodhees, Brahmins and Gonds, from the hands of buniyas, and eradicating the docks and darnels too often growing there.

Undoubtedly in some cases to restrict the powers of alienation is to bolster up a degenerate family in a position which might perhaps be better filled by another. But this would be only for a short time. Either the family would recover stronger from adversity, or sinking deeper would finally fall under the revenue laws—a fate which all Natives would look on with perfect indifference, because it always has been occurring and always will recur, and is, as it were, indigenous to them.

These cases of final necessity—cases where there is no near male heir of the same stock, where a widow is the least of a family, where a Mahomedan or person of alien race holds the land—will be sufficient to prevent stagnation in the circulation, and these with all our waste lands wanting purchasers will adequately supply the land market for generations to come.

There is yet another difficulty. It is by no means easy to tell in most cases what portion of a present incumbent's debts have been self-contracted, and what has come down from his ancestors, or at least is the direct result of the extravagance of some ancestor who was fortunate in having lived and died before the conception of Section 205.

In regard to the sale of ancestral land under process of the civil courts in satisfaction of debts inherited from, or originated long ago by, ancestors of the present incumbents, the hardship is infinitely greater. I believe all my former remarks apply here again with ten-fold power. The measure is directly opposed to the often declared sense

of the whole Hindu population, traders and agriculturists alike; and the Government has shown respect to the feeling which every money-lender will admit, except when he is urging his own individual case. He sees reasons why his neighbour should not thus enforce a sale, but shuts his eyes to the same barriers in his own path. The officers of the Settlement Department were formerly directed to be careful that the great boon conferred by Government, which has caused the enormous rise in the value of each malguzar's property, should rest with the malguzars, and not by hollow mockery be given with one hand only, to be taken away by the other, the prize and prey of the usurer. Most unfortunately those directions were, I believe, recanted, to the gain of none but the mahajun, and the losers consider themselves to be the victims of a breach of faith.

I have read somewhere the story of a man shut up in an iron prison chamber, the ceiling of which steadily and surely descending, day by day, crushed him to death in his iron shroud. This seems to me not unlike the position of the successor to an encumbered estate of some importance. Pride, the number of his dependants, the wishes of his relations and hereditary tenants, nurture and education for one position, his positive inability to adapt himself to any other position by the exercise of his own will, the old name of his house for hospitality and religious charity to be revered, the utter hopelessness and uselessness of retrenchment, these are the walls of his iron prison; the descending ceiling is interest, usury and litigation, while the victim is there, not by his own fault, but by mere accident of birth, the inheritor of a patrimony of sorrow.

It may be urged that to the sons a debt contracted by their father on his death bed, or a day before his death, is an ancestral debt. Be it so, the greater will be the necessity for independent security, other than ancestral land, in which the borrower has only a limited and transitory interest. He who cannot raise a loan without staking the rights of others of those nearest and dearest to him, is not fit to have money lent to him. If any usurer tempted by high interest chose to lend to him on the security of his transitory interest in the ancestral land and loses, let him stand by his loss like any other gambler. I am perfectly aware that only the right, title and interest of the judgment-debtor or vendor passes in a sale, whether by public auction or private arrangement, to the vendor. But at all events in the case of sales under the action of the Civil Procedure Code, and from this precedent, also in cases of private alienation, I am convinced that a suspicion has not crossed the minds of purchasers or of sons who have thus been disinherited, that there may be future law suits for them to wade through, and sons have to prove their fathers guilty of wanton folly and gross injustice, and purchasers, that the original loans were taken under absolute necessity or to preserve family credit of the borrower long dead. It would be now almost cruelty to whisper such things about, and on the whole could do no public, and little, if any private, good, but rather increase legal wrongs to a few individuals.

In my opinion it is greatly to be hoped that in these Provinces, at least where we are in a transition state, sales under process of the civil court of any ancestral land in which there exist decided and inherited interests of others belonging to the same stock, whether sons, grandsons or nearly related collaterals, may soon be numbered with other experiments which have proved too radically reforming for us, and that substantive law on contracts may equally soon restrict the wanton, and as regards posterity the wrongful alienation of ancestral landed property by the temporary incumbent.

No. 1741, dated the 16th August 1855.

From—The Secretary to the Government of the North-Western Provinces.

To—The Secretary to the Sudder Board of Revenue, North-Western Provinces.

ALTHOUGH the course of proceedings in regard to the recognition of debts of parties to be admitted to proprietary engagements in the settlements now in progress throughout the districts of the Saugor Division is believed to be well understood by the local revenue officers, the Lieutenant-Governor thinks it proper to place on record the rule which he would desire to be observed on the subject, and to request that it may be officially communicated for the guidance of those officers.

2. The rule is that property will be conferred at the settlements subject only to the condition generally of liability to sale on account of debts contracted subsequently to the date of settlement. If, however, any creditor of a party, recognized as proprietor, should desire to come to terms with him after an examination of accounts and an adjustment of the amount due at the time of the new engagements to the satisfaction of the Settlement Officer, arrangements may be made, according to the circumstances of each case, for fixing yearly instalments in order to the liquidation of the amount so declared to be due. Failing payment of any of these instalments, the property may, as one of the conditions on which it is granted, be rendered liable to sale for the debt in like manner as for a debt contracted after the settlement.

3. It may be advisable that the Commissioner should publicly notify this rule for the information of all concerned; the Board are requested to call upon him to submit a draft of notification for the purpose, to which he will be at liberty to add for consideration any details which he may think suitable for the more effectual furtherance of its objects. The Board will submit this draft with any suggestions on their part for final approval.

SAUGOR DIVISION PROCLAMATION.

WHEREAS by a former Proclamation dated 6th June 1854 it was made known that the Government had determined to confer the

proprietary right of malguzaree estates on such person or persons as may, from ancestral right or long possession, or both, have the best claim, it is now hereby made known that, from and after the date of the new settlement in proprietary right, such estates or portion of estates will, in addition to their liability to sale for arrears of the public revenue, be liable also to be publicly sold for private debts contracted by the owners subsequently to the date of settlement.

2. If, however, any creditor of a party recognised as proprietor should desire to come to terms with the proprietor after an examination of accounts and adjustment of the amount due at the time of the new engagements, and such adjustment be satisfactory in the opinion of the Settlement Officer, arrangements may be made, according to the circumstance of each case, for fixing yearly instalments in order to the liquidation of the amount so declared to be due.

3. After these arrangements have been made should the proprietor fail to pay one or more of these instalments punctually, the landed property of the proprietor shall, on the fact of default being established by regular suit and decree, be subject to sale by public auction in the same way as it would be liable to sale for a debt contracted subsequent to the settlement.

4. If the proprietor on his part fail to come to an adjustment of his old debts at the time of settlement which shall be satisfactory in the opinion of the Settlement Officer, his landed property shall be subject to sale upon a special order to that effect contained in the decree of a civil court; this order shall contain an extract from the proceedings of the Settlement Officer, stating the failure of the proprietor to agree to a proper settlement; but if the creditor shall not agree to the Settlement Officer's adjustment of such debts, the property shall not be liable to sale for such former debts.

5. If both creditor and debtor object to the adjustment of the old debts in the above manner by the Settlement Officer who may be assisted by assessors, the landed property of the debtor shall be liable to sale for the old debts upon a special order to that effect contained in a decree of the civil court. This order shall contain an extract from the proceedings of the Settlement Officer as in the above paragraph.

6. No landed property shall, however, be sold by public auction for private debts incurred previous to the date of settlement without the sanction of the Commissioner in each case.

7. No sale of landed property shall be made until 30 days clear after the arrival of the sanction of sale by the Commissioner for debts incurred before the date of settlement, or by the competent court for debts subsequently incurred, and on the arrival of such sanction a proclamation in Hindee shall be made, a copy of which shall be stuck up in a conspicuous place in the court of the district officer, another in that of the Tahseeldar of the pergunnah where the estate is situated,

and another copy in the village where the debtor usually resides, and the fact of due proclamation shall always be certified by the proper officers and recorded.

8. Should the debt be paid prior to the day of sale, the auction will not take place.

9. The right of the debtor or debtors (whatever that may be) in the estate shall be distinctly stated in the proposed sale statement and proclamation, and such right or rights only shall be sold.

10. In putteedaree estates any other members of the co-parcenary not affected by the decree shall be entitled to pre-emption on paying down, on the day of sale and before the cutcherry is closed, the amount of the concluding bid.

11. The purchaser of rights and interests at public auction shall pay the full purchase money into the court of the district officer within ten days after the sale, and failing to do so, the property shall be again sold, and if any loss occur the first purchaser shall make it good; but if a high price be realized at the subsequent than at the first sale, the excess shall be for the benefit of the creditor, as far as his claim goes, or if the amount more than covers the debt, the excess shall be paid to the late proprietor.

12. All such sales of rights and interests shall be of the nature of private transfers; the purchasers succeeding in all respects to the public obligations and liabilities of the parties whose rights and interests have been sold.

13. On completion of the sale possession will be given to the auction-purchaser where the officer in charge of the district may be satisfied that the party, whose rights and interests are sold, was himself in *boná fide* possession at the date of sale. In any case of difficulty the district officer will refer to the Commissioner for his instructions.

No. 2565, dated Lucknow, the 25th May 1871.

From—H. B. HARINGTON, Esq., Offg. Secretary to the Chief Commissioner of Oudh.

To—The Secretary to the Government of India, Home Dept.

I HAVE the honour to acknowledge the receipt of your letter No. 1717, dated 22nd September last, calling for a full report on the working of Sections 243 and 244 of the Civil Procedure Code.

2. In reply, I am directed to forward the accompanying abstract of reports of Commissioners and Deputy Commissioners on the subject, together with a copy of a statement illustrating the effect of the above sections on sales of land in Oudh under decrees of the civil courts in the years 1868-69.

3. During these two years the results shown were—

Sales	58	Under first part of Section 243.
Attachment and management ...	193	
Realizations of decrees without sale	80	Under second part of Section 243.
Sales enforced	15	

While as regards temporary alienation, procedure of Section 244 was followed in four cases.
Not followed in 17 cases.

4. The fact, however, is that no crucial instance as to the working of these two sections can be taken from Oudh; for in it the civil and revenue administration of a district is vested in one and the same person, and their working is modified by the rule that "no ancestral property in land should be sold in satisfaction of a decree without the sanction of the Judicial Commissioner, and before acquired property in land shall be sold, the permission of the Divisional Commissioner shall be obtained".

Vide Foreign Department Notification No. 4325, dated 6th August 1861, paragraph 1.

5. The reports of Commissioners and district officers seem to point to the conclusion that, although no alteration of the law is wanted, its results have been less satisfactory in small estates than in large ones, the reasons being that in this Province the attachment of an estate is rarely resorted to unless the owner is deeply involved, and small estates are less able than large ones to bear the expenses entailed by the operation of these sections.

6. At the same time the working of Sections 243 and 244 will in large estates be limited even more closely by the effects of Act XXIV. of 1870 than by the old local rule of which the Act was the legitimate culmination; and may be, in fact, confined to those small estates in which it has been shown to have been unsatisfactory, and in which, therefore, it may be as well to direct that action be not taken under these sections without due consideration.

Abstract of correspondence regarding the working of Sections 243 and 244 of the Code of Civil Procedure.

No. 588, dated 15th May 1871.

JUDICIAL COMMISSIONER forwards correspondence on the subject, together with a statement for the Province.

Lucknow.
No. 5632, dated 28th December 1870.

The Officiating Commissioner, Major MacAndrew, submits the returns called for (together with the replies of Deputy Commissioners), and states as the Chief Civil Judge of the District and the Collector is the same person in Oudh, Section 244

does not apply, especially as the sanction of the Commissioner is required to the sale of acquired, and that of the Judicial Commissioner to the sale of ancestral, property in this Province. He can therefore submit no report on the working of this section.

Section 243 appears to work well where the property is sufficient to pay for the services of a manager, but in some instances in Oonao, during the administration of Major Shaw, attachments of small properties were made under this section, and they were not found to be successful. They were followed by 13 cases of sale in the two years 1868 and 1869, while in the other districts, in which more judicious attachments were made under the section, not a single instance of sale followed.

Section 243, therefore, appears to be adapted to considerable properties. Commissioner does not see, however, why the matter should not be left to the discretion of the court, and why the application of the judgment-debtor should be necessary to the appointment of a manager under the section. He sees no advantage in the retention of this proviso, and a man might spite his heirs or his co-parceners by withholding it. It was abandoned in the Oudh Rent Act, in Section 125 of which there is a provision to get rid of it.

Commissioner also thinks that if it is contemplated that the law should be amended, some provision should be made for the protection of small properties. The most convenient appears to be to empower the court, if there is a prospect of the discharge of the debt from the profits within a reasonable time, to make over the attached property to the decree-holder for a fixed time, in lieu of all demands, principal and interest, the time of course to depend on the respective amount of the debt and the profits. This is known in the Revenue Department as a *putbunduk* mortgage, and it appears to be best suited to the double end of satisfying the decree and preserving the property in the old family in cases where the estate is not considerable enough to pay for a manager.

Mr. Quinton reports that Section 244 is practically inoperative in Oudh. It empowers the Collector to make a representation to the civil court where he considers the sale of revenue-paying land in execution of decree objectionable, and is of opinion that satisfaction can be obtained by its temporary alienation, and authorises the court on representation being made and on security for the debt or value of the land being given to make provision for the satisfaction of the decree in the manner recommended by the Collector.

In Oudh the Chief Civil Judge of the District and the Collector are one and the same person, and no sales of land in execution of decree can take place without the sanction of the Commissioner and Judicial Commissioner. The application for this sanction must be endorsed by the Deputy Commissioner in his capacity as Chief Civil Judge of the District, who, when he considers the application injudicious, returns it to

the court from which it emanated. The cort therefore takes proceedings under Circular 243 which, if successful, settles the case, or if not, render a sale inevitable, and leave no room for the action of the Collector.

During the past three years 62 applications were made for the sale of land in execution of decrees in the Lucknow District. In 22 no sales followed, judgment-debtors paid upon receipt of sanction to the sale from Judicial Commissioner; two executed fresh bonds for the sums decreed, three disposed of their property by private sale or mortgage, and in three cases the amount due was realized by managers appointed under Section 243.

The Oudh rule above alluded to, it is clear from this, affects the action of the courts under Section 243 also, as the delay consequent on the necessity for a reference to the Judicial Commissioner practically gives to the judgment-debtor a term to make private arrangements such as the courts are competent to grant under the section. This delay is often considerable, as detailed particulars respecting the nature of the property and the rights of a judgment-debtor in it must be furnished.

The appointment of managers under Section 243 has in some districts been very fully resorted to, especially where talookas were concerned, for instance, the case of the birnee estates in Fyzabad; and has undoubtedly operated to save such estates from the hammer by spreading payment of debt due to decree-holders over a long series of years.

Oonao.

Colonel Chamier reports that the experience gained from the attachment of small properties under Section 243 is not satisfactory. If zemindars could be induced to help their distressed sharers by managing their small puttees for them, decrees could be easily realized; but as sharers have generally feuds, a stranger has to be nominated as manager, and the cost of management then becomes so great that no relief is afforded. Where the property is large the provisions of Section 243 are found to succeed.

* Cases in which land was attached and placed under a manager under the first part of Section 243.

The attachments referred to in column 4* of statement were not at all successful, because the properties were disproportionately small to the amounts decreed.

In Oudh, where the functions of Civil Judge and Collector are vested in one person, the distinction between the two Sections 243 and 244 are not observed, excepting in decrees passed against an estate which is under the direct management of a Collector.

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Barabunkee.

The Deputy Commissioner simply forwards a return without remarks, which is embodied in the provincial statement.

Roy Bareilly.
No. 96, dated 12th January 1871.

Mr. Capper forwards a divisional return with the following remarks by Deputy Commissioners:

"In no case has a decree been fully satisfied. During 1868 there were five cases aggregating Rs. 64,985-15-5, out of which Rs. 17,585-3-9 were realized in two cases from the surplus profits of the estates and paid over to the decree-holders. In 1869 there were seven cases amounting in all to Rs. 7,511-9, of which Rs. 1,011-13-9 were realized in one case and paid over to decree-holder. In several of these cases sale is about to be recommended, as there appears no hope of realizing within a reasonable period. However desirable it may be to prevent the sale of land, is of opinion that the prevention should not be allowed except in those cases in which there is a certainty that satisfaction of decree may be made within a reasonable period; but to effect this he does not see any necessity for any alteration in the law which gives ample powers to the courts to act as they think best in the interests of the litigants, or to the Collector in the interests of the landholder."

Sultanpore.

"In practice land is never sold in execution of decrees in Oudh. The course is always to attach, appoint a manager, and pay net profits to judgment-creditor. The estates are generally found to be already encumbered with mortgages, so the result is not satisfactory for the judgment-debtor; but forcing a sale pending progress of the settlement, trying all rights in land, would be sacrificing the property for much less than its real value."

Upon which Mr. Capper remarks that "the Deputy Commissioner's remark as to practice in Oudh is too sweeping. When Officiating Judicial Commissioner I saw a good many orders sanctioning sale. The Deputy Commissioner himself does, however, refuse to recommend it, and several appeals against such orders by him have been decreed".

Mr. Capper adds that he does not know of any valid reason for alteration of the law.

Pertabgurh.

"The two* estates attached in 1868 are still under attachment owing to there having been arrears of Government revenue which have now been realized, and the profits now go towards the decree. Out of two estates one has been realized in 1870, the decree-holder having been satisfied in full by the judgment-debtor. Thinks the procedure so far beneficial as it saves the estate from being sold in most instances."

* Procedure of Section 244 followed.

Commissioner forwards statement from Deputy Commissioner, Hurdui, who, in expressing his opinion on the subject, states that he does not consider any alteration in the law necessary at present.

Seetapore.
No. 399, dated 25th January 1871.

EXTRACT.

Hurdui.

Years.	No. of cases in which land was sold in execution of decree.	No. of cases in which land was attached and placed under a manager under first part of Section 243.	Decree realized without sale of the land.
1868 ...	5 *	11 †	......
1869 ...	6 ‡	7 §	1 ‖

Colonel Thompson, in continuation of No. 399, forwards statements and copies of letters from Seetapore and Kheree.

No. 893, dated 1st March 1871.

* The amount of decree was wholly satisfied in these cases.

† But of these four cases were satisfied in full and three in part; four cases remained unsatisfied, as no profits could be realized: one of these unsatisfied cases was wholly satisfied by sale in 1870.

‡ In one of these cases the amount of decree was satisfied in full; the other five cases were satisfied in part, but the greater portion of the amount of decree was paid as follows:

		Rs.	As.	P.		Rs.	As.	P.	
In one case the claim was		3,584	7	0	and	2,700	0	0	were realized.
Ditto	ditto	1,632	14	0	„	1,578	0	0	ditto.
Ditto	ditto	2,891	3	0	„	1,615	0	0	ditto.
Ditto	ditto	2,682	14	0	„	1,675	0	0	ditto.
Ditto	ditto	1,689	13	9	„	1,481	8	6	ditto.

There were no cases in which land was temporarily alienated.

§ Out of these two cases were satisfied in full and three in part; two cases remained unsatisfied: in one case profits did not arise, and in the other the enquiry showed that judgment-debtor had no right to the profits.

‖ This decree was fully satisfied.

Mr. Gibson states that no sales of land have taken place. In attachment of entire mouzahs or estates there is no serious difficulty to be encountered. But from the attachment of fractional shares no benefit, or very little, is derived; the attachment of groves often leads to payment of the amount of a decree.

Seetapore.

Major Show states that several petty zemindars who have involved themselves by settlement proceedings having a wild idea of applicability of Act XXIV. of 1870 are applying for aid under that Act. There is no doubt that in most of these cases many deserving petty landlords can be relieved from the embarrassments their creditors raise by suing all together with the intention of selling up their hypothecated estates by courts appointing managers under Sections 243 and 244, but Deputy Commissioner regrets their provisions have not been availed of in his district hitherto.

Kheree.

Colonel Reid forwards to Judicial Commissioner the replies of Deputy Commissioners with the following observations:

No. 899, dated 23rd February 1871.

The Deputy Commissioner shews nine cases under the first part and three under the second part of Section 243; in one of the two 1868 cases the amount of the decree has been paid in full, in the other the whole is expected to be realized in two or three years. In two of the seven 1869 cases payment in full has been made, and the remaining decrees are in course of realization from the surplus profits. In the three cases entered under the latter part of Section 243, application was made for sale, but it was disallowed and the estates were attached, and the decrees are gradually being liquidated from the profits.

Fyzabad.

Shews seven cases under the first part of Section 243 (one of 1866). In one only of these is the judgment-debtor likely to benefit by the procedure, as in all the others the endeavour to make other arrangements to satisfy the decree have failed, and sale has been recommended.

Gondah.

Deputy Commissioner gives one case in which land was temporarily alienated, but Commissioner is not sure that the alienation in this case was not in perpetuity. As observed by Deputy Commissioner in paragraph 3, so much of Section 205 of the Civil Procedure Code as renders land liable to sale in execution of a decree is subject to restrictions in Oudh, and the result is that a new system not altogether in accordance with Sections 243 and 244 has sprung up (*vide* his explanation in his paragraphs 4 and 5). The Oudh procedure having been exceptional, it follows that the reports for this Province will be of comparatively little value in enabling the Government of India to form an

Baraitch.

opinion on the general question of the effects which the sections under consideration have had on sales of land in execution of decrees of the civil courts.

Notwithstanding the unsatisfactory results in Gondah, Colonel Reid is of opinion that judgment-debtors (especially embarrassed ancient landholders, as noted by the Deputy Commissioner, Baraitch) have decidedly benefited by our local procedure, and that decree-holders have had no substantial grievance except with regard to interest. One manifest objection to the system is that there are limits beyond which attachment and direct management cannot be carried without occupying more of the time and attention of the district officers that can be spared without detriment to their other duties; and another objection is that it may have some tendency to make landholders less provident and less self-reliant than they would be if this means of escape from the consequences of their mismanagement did not exist.

States that he has no sufficient reason to believe that land is looked upon as a less valuable security now than formerly. On the contrary, he believes that bankers are more ready than ever to advance money to landholders, and they look forward with something like dismay to the enforcement of the provisions of Act XXIV. of 1870. He is inclined to agree with the Deputy Commissioner, Baraitch, that in the cases of talukdars who fail to avail themselves of the great advantages of this Act, no special consideration should be shown in the execution of decrees.

No. 2295 of 31st October.

The Deputy Commissioner of Baraitch, in his docket (No. 2549, dated 8th December 1870) forwarding the statement and his report on the working of the sections, remarks that all indebted talukdars have now an opportunity of freeing themselves from debt, but if they don't avail themselves of the benefits offered by Act XXIV. of 1870, the authorities may perhaps in future be less reluctant to sanction the sale of land.

In his report he states as follows:

"(2.) I feel some difficulty in offering an opinion, as the sections are rarely, if ever, acted upon in their integrity in Oudh. I do not remember to have seen a single case. Section 243 enables the court to postpone the sale at the instance of the judgment-debtor if he can satisfy the court that there is reasonable ground to believe that the amount of the judgment may be raised by the mortgage of the land, or by letting it on lease, or by selling a portion of it. Section 244 empowers the court to stay public sale at the instance of the Collector, on its being represented that the public sale of the land is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land: in this case security for the amount of the decree or the value of the land must be given.

"(3.) When the Civil Procedure Code was extended to Oudh, Section 205 was so far modified that no property in land can be sold without the sanction of the Judicial Commissioner or the Commissioner of the Division, and the sanction is so seldom given that the law which empowers land to be sold in satisfaction of a decree may be said to have become a dead letter.

"(4.) The result is that in Oudh there is no occasion for the judgment-debtor to show that there is reasonable ground to believe that the money will be raised, or for the Collector to represent that the decree will be satisfied within a reasonable period, for the court cannot sell under any circumstances. Under these circumstances a new system of procedure has sprung up, and the attached land is taken under direct management, and the decree-holder is gradually paid from the profits. Security for the decree is not demanded, for the court has no power to enforce its demand by refusing to postpone the sale.

"(5.) The sale of land is so seldom sanctioned that the courts do not always go through the form of applying for it, and the Oudh system is getting so well known that decree-holders frequently apply for the land to be taken under direct management instead of for its sale.

"(6.) The system acts well in the case of ancient land-owners, who are embarrassed with a number of old debts, many of them contracted before the annexation of the Province, and it has saved many old estates from falling into the hands of money-lenders. But where new debts have been incurred, I doubt if it is expedient that the indebted land-owner should invariably be protected against himself at the expense of the money-lender, and in the end the land-owner will probably derive no great benefit from the Oudh custom, for it will depreciate the value of land as a security. I remember that some four years ago, in a case between a Shahjehanpore mahajun and a Kheree zemindar, it was ruled that land in Oudh was not a security for debt, and since that ruling became known in Shahjehanpore, I have little doubt that the bankers of the place have been more chary about lending money to Oudh zemindars, except at high interest.

"(7.) One of the chief objections to the present custom is that courts executing decrees cannot award interest if the decree be silent on the point. When an estate is taken under direct management for the satisfaction of a decree, the debt is generally paid off in a period of perhaps six years, or more; and if interest was not awarded in the original decree, the decree-holder loses the use of his money, and gets no interest for it for a long time, and under the present system the judgment-debtor is not likely to allow more than is entered in the decree, but this might be remedied; and as the decree-holder is kept out of the money to which he is entitled, it is but fair that the debtor should make some sacrifice also. At present an allowance is always made to the owner of the attached estate, and I would suggest that in future no such

allowance be made unless the judgment-debtor agree to pay interest on the judgment-debt.

"(8.) Another point is how the profits are to be distributed when there are two or more attaching creditors. In case of sale the person who first attached is entitled to be first paid (Section 270), and the surplus is rateably distributed amongst the others (Section 271); but as the law did not contemplate the Oudh system, no rule has been laid down regarding the distribution of profits of attached estates.

"(9.) I think it would be a good thing if resort were sometimes had to mortgage or temporary alienation of an estate, in order that the amount of the decree might be raised, especially in cases in which the decree cannot be satisfied from the profits of the estate for many years, the decree-holder would then get his money without delay, and the district officers would be spared the heavy work which often falls on them as managers of attached estates.

"(10.) In this district but few estates have been taken under direct management."

Statement showing the result of the working of Sections 243 and 244 of the Civil Procedure Code in each of the districts of the Province of Oudh during the years 1868 and 1869.

DIVISIONS.	DISTRICTS.	Number of cases in which land was sold in execution of decree.		Number of cases in which land was attached and placed under a manager under the first part of Section 243.		Number of cases in which sale was postponed under the latter part of Section 243, with a view to the realization of the amount of the decree by mortgage, lease, or private sale of a portion of the land. — Decree realized without sale of the land.		Number of cases in which sale was postponed … — Sale of the land enforced.		Number of cases in which land was temporarily alienated. — Procedure of Section 244 followed.		Number of cases in which land was temporarily alienated. — Procedure of Section 244 not followed.		
		1868	1869	1868	1869	1868	1869	1868	1869	1868	1869	1868	1869	
LUCKNOW.	Lucknow	7	18	...	...	5*	14*	...	...	...	...	...	...	* In 14 of these cases the judgment-debtors paid up the money after receipt of Judicial Commissioner's sanction to the sale; in two judgment-debtors executed fresh bonds, and in three they disposed of their property by private sale and mortgage.
	Oonao	8	12	11	22	4	2	6	7	...	...	...	...	
	Barabunkee ...	1	...	21	15	2	10	...	...	...	...	...	...	
	TOTAL ...	16	30	32	37	11	26	6	7	...	...	...	...	
	Seetapore	...	...	3*	5†	1	...	...	...	...	...	...	...	* In one of these cases the profits being very small, the progress is slow. In another the parties arranged the matter privately after attachment, and the third is in course of realization. † Two of these in course of realization. In one no progress sale necessary, and in another several mouzahs attached; decree in course of realization.

SEETAPORE.	Hurdui	5*	6†	11‡	7§	...	1‖	...	...	...	...	...	...	* The amount of decree was wholly satisfied in these cases. † Out of these four cases were satisfied in full, and three in part; four cases remained unsatisfied, as no profits could be realized: one of these unsatisfied cases was wholly satisfied by sale in 1870. ‡ In one of these cases the amount of decree was satisfied in full, the other five cases were satisfied in part, but the greater portion of the amount of decree was paid as follows: Rs. As. P. Rs. As. P. In one case the claim was for 3,584 7 0 & 2,700 0 0 were realized. Ditto ditto for 1,632 14 0 & 1,578 0 0 Ditto ditto for 2,891 3 0 & 1,615 0 0 Ditto ditto for 2,682 14 0 & 1,675 0 0 Ditto ditto for 1,689 13 9 & 1,481 9 6 There were no cases in which land was temporarily alienated as noted in columns 7 and 8. § Out of these two cases were satisfied in full, and three in part; two cases remained unsatisfied; in one case profits did not arise, and in the other, the enquiry showed that judgment-debtor had no right to the profits. ‖ This decree was fully satisfied.
	Kheree	...	1	37*	11†	14*	7†	...	...	...	...	...	...	* There are 17 cases of 1868 which are still pending, and the amount of decree has not been realized in full. There is no column in this statement to show the number of cases, and the amount proportionately realized in cash. Besides these 17 cases, in six cases the attached property was released after a portion of the decree was realized on objection raised by the objectors. † These cases are still pending. In one property was released on objection of the objector, and the decree-holder has taken no further steps. In no case the procedure laid down in Section 243 was followed.
	TOTAL ...	5	7	51	29	15	8	...	...	...	...	...	...	
FYZABAD.	Fyzabad	...	...	2*	7†	...	3‡	...	...	...	...	...	...	* The Collector was asked to manage the estate. In one case the amount has been paid in full, and in the other the whole is expected to be paid in the course of two or three years. † In two of these cases full payment has been made, and on the rest payments are made from the surplus of profits. ‡ In these cases application was made for sale of certain villages, but it was not allowed, and the estate was accordingly attached from the profits thereof; the decrees are being satisfied.

DIVISIONS.	DISTRICTS.	Number of cases in which land was sold in execution of decree.		Number of cases in which land was attached and placed under a manager under the first part of Section 243.		Number of cases in which sale was postponed under the latter part of Section 243, with a view to the realization of the amount of the decree by mortgage, lease, or private sale of a portion of the land.				Number of cases in which land was temporarily alienated.				
						Decree realized without sale of the land.		Sale of the land enforced.		Procedure of Section 244 followed.		Procedure of Section 244 not followed.		
		1868	1869	1868	1869	1868	1869	1868	1869	1868	1869	1868	1869	
FYZABAD,—concluded.	Gondah	...	...	4*	2†	...	...	...	...	...	...	...	...	* In one of these cases the management appears promising for satisfaction of the decree. In the third the Deputy Commissioner, seeing no probability of satisfying the decree within a reasonable period, recommended removal of the attachment and sale of the estates, which was acceded to by the Judicial Commissioner. † In one of these the estate comprises 179 villages, and is not well managed. It is with great dfficulty that the judgment-debtor can succeed to pay up the Government revenue. The judgment-debtor has been called on to show cause why his estate should not be sold outright; and in the other the Deputy Commissioner, seeing no probability of satisfying the decree within a reasonable period, recommended removal of the attachment and sale of the estate, which was sanctioned by the Judicial Commissioner. The decree-holders in this district have not been benefited much from the working of Section 243, Civil Procedure Code.
	Baraitch	...	...	...	...	...	...	...	...	...	...	...	1*	* In this case a puttee was attached and made over to the decree-holder as a person claiming pre-emption promised to satisfy the decree.
	TOTAL ...	...	...	6	9	...	3	...	...	...	...	...	1*	

Roy Bareilly.	Roy Bareilly ...	...	...	5	7	2	1	...	...	...	...	...	...	In no case has a decree been fully satisfied during 1868. There were five cases, aggregating Rs. 64,985-15-5, out of which Rs. 17,585-3-9 were realized in two cases from the surplus profits of the estates, and paid over to decree-holders. In 1869 there were seven cases, amounting in all Rs. 7,511-9, of which Rs. 1,011-13-9 were realized in one case, and paid over to decree-holder. In several of these cases sale is about to be recommended, as there appears no hope of realizing within a reasonable period. However desirable it may be to prevent the sale of land, is of opinion that the prevention should not be allowed except in those cases in which there is a certainty that satisfaction of decree may be made within a reasonable period; but to effect this he does not see any necessity for any alteration in the law which gives ample powers to the courts to act as they think best in the interest of the litigants, or to the Collector in the interest of the landholder.
	Sultanpore ...	...	...	8	8	5	8	...	...	...	...	8	8	In practice land is never sold in execution of decrees in Oudh. The course is always to attach, appoint a manager, and pay net profits to judgment-creditor. The estates are generally found to be already encumbered with mortgages, so the result is not satisfactory for the judgment-debtor; but forcing a sale, pending progress of the settlement, trying all rights in land, would be sacrificing the property for much less than its real value. The Commissioner, Mr. Capper, observes that the Deputy Commissioner's remark as to practice in Oudh is too sweeping. When officiating as Judicial Commissioner he saw a good many orders sanctioning sale. The Deputy Commissioner himself does, however, refuse to recommend it, and several appeals against such orders by him have been decreed.
	Pertabgurh ...	...	...	1	...	...	1	...	2	2*	2†	...	...	* The two estates attached in 1868 are still under attachment owing to their having been in arrears of Government revenue, which have now been realized, and the profits now go towards the decree. † Out of two estates one has been realized in 1870, the decree-holder having been satisfied in full by the judgment-debtor. Thinks the procedure so far beneficial, as it saves the estate from being sold in most instances. The Commissioner, Mr. Capper, remarks that he does not know of any valid reason for alteration of the law.
	TOTAL ...	...	...	14	15	7	10	...	2	2	2	8	8	
	GRAND TOTAL ...	21	37	103	90	33	47	6	9	2	2	8	9	

LUCKNOW;
The 21st March 1871.

G. COUPER,
Judicial Commissioner of Oudh.

No. 2443, dated Fort William, the 26th May 1871.

From—S. C. BAYLEY, Esq., Offg. Secretary to the Government of Bengal, Judicial Department.

To—The Secretary to the Government of India, Home Dept.

WITH reference to your letter No. 1715 of the 22nd September last, concerning the working of Sections 243 and 244 of the Civil Procedure Code, the Lieutenant-Governor has consulted the Commissioners of Divisions, and, through them, the Zillah Judges and Collectors, and His Honor now directs me to submit an abstract of their replies prepared in this Office for the information of the Government of India.

2. From the abstract it will be seen that the provisions of the latter section have not been enforced, except in one instance, in the tributary mehals of Cuttack, and in fact it has been a dead letter in these Provinces.

3. In regard to Section 243, I am to say that while most of the officers consulted report favourably on the working of the section, there is a very striking difference in the frequency with which it has been resorted to in different districts. In the District of Tirhoot, for instance, there have been 97 instances, in which the section was brought into operation; in the District of Mymensing 73 cases occurred; while in the Districts of Nuddea and the 24-Pergunnahs in no one case has it been applied.

4. The Lieutenant-Governor is of opinion that the section is necessary and may be worked beneficially, but it requires the strictest supervision on the part of the superior courts. There is strong reason to believe, and the High Court have recently directed a careful inquiry into the matter, that in those districts where the section has been most freely resorted to, it has been done not purely from the desire to save the judgment-creditor's property, but as a convenient means of creating a line of patronage where there is little supervision, and where, at all events, the incumbent's salary for a time is certain. I am to draw special attention to Mr. Simson's remarks on this point. The inquiry which the High Court has ordered in this matter will doubtless lead to the passing of such general orders as may be necessary for more carefully supervising the working of the section.

5. It is in the districts named above where most frequent resort has been had to the section (viz., 97 cases in Tirhoot and 73 cases in Mymensing) that the beneficial effect of the section has been least perceptible. For in Mymensing only five decrees have been fully satisfied, and in Tirhoot only 11; whereas in Rajshahye, where the section was worked carefully, some eight estates, ranging from Rs. 26,000 to Rs. 122 (of annual collection), have been saved from sale, the decrees having been fully satisfied; and in Bhaugulpore one estate with 55 decrees was preserved, all the decrees being satisfied; and in Tipperah it has similarly worked successfully.

6. I am to express the Lieutenant-Governor's opinion, however, that in all those districts where the section has obviously worked well, it has been resorted to too sparingly to have any very appreciable effect on the number of sales of land under decree; whereas in the two districts of Mymensing and Tirhoot there is reason to suppose that many estates have been preserved only for a time from sale without any permanent benefit accruing to either decree-holder or judgment-debtors.

7. I am to invite special attention to the reports submitted by the Commissioners of the Chota Nagpore and the Orissa Divisions, of which copies are herewith* forwarded, and to observe that the Lieutenant-Governor is unable to find anything, either in the present statements or the correspondence mentioned by the latter Commissioner, which would tend to bear out the view of these sections ruining old families, as asserted by Mr. Ravenshaw—in fact the Commissioner's meaning in those remarks is altogether obscure; but I am to add that the Lieutenant-Governor is impressed with the belief that the various laws which vest public officers with the charge of estates in Bengal give a scope for the exercise of patronage in the way of appointments, farms, &c., which make it necessary that the practice should be carefully watched.

* Letter No. 205, dated the 10th February 1871, with enclosure, from the Commissioner of Chota Nagpore.
Letter No. 1123, dated the 6th February 1871, with enclosures, from the Commissioner of Orissa.

Abstract on the working of Sections 243 *and* 244 *of the Civil Procedure Code (Act VIII. of* 1859*).*

On the 22nd September last the Government of India called for a full report* on the working of Sections 243 and 244 of the Civil Procedure Code, with such statements and details as will illustrate the effects which these Sections have on sales of land under decrees of the civil courts.

* Proceedings for October 1870, No. 34.

On the 13th October we requested the Divisional Commissioners, after communicating with the Collectors and Zillah Judges in their divisions, to submit to this Office the report required by the Government of India.

Their replies have now been received, and the accompanying Statements A and B which have been compiled from them show the operations of the sections in their divisions.

The following is an abstract of their opinions and suggestions:

The Commissioners of Assam and Cooch Behar have no suggestions to offer, as the sections have never been brought into operation in the execution of decrees of civil courts in either divisions.

Assam and Cooch Behar.
Letter No. 272, dated the 3rd December 1870, from the Officiating Commissioner of Assam.
Letter No. 884, dated the 16th November 1870, from the Commissioner of Cooch Behar.

The procedure prescribed in the latter portion of Section 243 is, Mr. Buckland says, frequently adopted, generally with the consent of the creditor,

Burdwan.
Letter No. 41, dated the 24th January 1871, from the Commissioner of Burdwan.

who becomes almost always the private purchaser of the property, and both parties ratify the transaction in court by the production of a deed of sale, and filing a petition of compromise on the part of the judgment-debtor, to whose advantage such sales generally take place. Some parcels of land-paying rent to Government are sometimes sold at Serampore like other immovable property.

Rajshahye.
Letter No. 22 Ct., dated the 10th January 1871, and enclosures, from the Commissioner of Rajshahye.

The Commissioner of Rajshahye offers no suggestions on the subject.

The Commissioner of Orissa begs a reference to the correspondence* connected with the condition of the Cuttack peshkush mehals, particularly to paragraphs 10 to 12 of his report No. 660, dated the 2nd September 1867, to the Board of Revenue, if it is proposed to legislate on the subject. Says it is an undoubted fact that many of the old families and properties in Orissa have been ruined by our Civil Procedure Sections 244 and 245 which were intended to operate for their protection, and to save them from utter ruin.

Orissa.
Letter No. 1123, dated the 6th February 1871, and enclosures, from the Commissioner of Orissa.

* Revenue Proceedings for November 1867, Nos. 49—54, and 272—78, and Note by Mr. Dampier.
Revenue Proceedings for December 1867, No. 137.

From the report of the Judge of Cuttack it appears that the sections are seldom resorted to in Orissa, and when put in force are not found to work satisfactorily; little or no effect has been produced on sales of land under the civil court decrees.

The sections have fallen very nearly a dead letter, so far as the districts of the Presidency Division are concerned, and have had no appreciable effect on sales of land under decrees of the civil courts. Mr. Campbell offers no suggestions.

Presidency.
Letter No. 4 Ct., dated the 10th January 1871, and enclosures, from the Commissioner of the Presidency Division.

The Judge of Tipperah considers the sections very popular, and to provide very wholesome provision for rescuing judgment-debtors from what would otherwise be total ruin to them. The reason assigned by him as to why provisions of the section have not been frequently resorted to since it came into operation is that the jurisdiction of the Moonsiffs' courts was

Chittagong.
Letter No. 407, dated the 10th January 1871, from the Commissioner of Chittagong.

up to a recent period limited to suits of the value of Rs. 300, and in such cases it could not, he thinks, be expected that much benefit could accrue from the appointment of a manager; but now that the jurisdiction has been raised to Rs. 1,000, a corresponding increase may, he believes, be reasonably looked for in instances in which the sections will be applied.

There do not appear to have been any cases in the courts of the subordinate judicial officers in which sales have been postponed, in order to allow of an arrangement being made by parties themselves. This may be accounted for by the decrees in the Moonsiffs' courts being generally of so trifling a nature, and almost universally between parties not claiming the proprietorship of land, but only certain interest in land, such as the right to an izarah, howlah, putni, &c. Upon the whole the Judge is of opinion that the provisions of both sections can never have any other than a salutary effect in preserving the rights and estates of judgment-debtors, many of whom become so, not from any fault of their own, but either from the acts of their ancestors; the enormous rate of interest in this country, or some other cause over which they have had no control, and moreover when properly carried out by the court cannot be detrimental to the interest of the judgment-creditors, and had such a law been in force at a prior date, there is no doubt but that many of the old families would have been rescued from the miseries to which they are now reduced. The Commissioner offers no opinion on the subject.

Chota Nagpore.

Letter No. 205, dated the 10th February 1871, and enclosures, from the Commissioner of Chota Nagpore.

Under the orders* of Government, dated 13th October 1833, and from the first formation of the South-Western Frontier Agency, immovable property was not sold in liquidation of debts, but under the orders of the agent the estate of the debtor was sequestrated, and the assets, after defraying expense of management, and in most cases a small allowance for the maintenance of the proprietor, appropriated to the payment of the creditor. When Act VIII. of 1859 was extended to Chota Nagpore, it was with a reservation of the powers that had so been confided to the Agent.

* Consultations, 13th October 1834, Nos. 3-4.

Before the extension of the Act to Chota Nagpore interest was disallowed on debts for which estates were sequestrated, but there was no rule to this effect. It was sometimes done under peculiar circumstances, as when a renewed bond had been given for a sum enormously in excess of the original sum borrowed, and the bond decreed on, but there is now no interference with the decree, whatever it may be.

The Commissioner observes there is nothing that he knows to prevent the civil courts in the Province directing the sequestration of the estates under Sections 243 and 244 without reference to the Commissioner, but this has not been done: the courts generally act on application for sale of the estate, which is submitted to the

Commissioner, and if he declines to sanction the sale, he directs sequestration in lieu.

The Commissioner of Bhaugulpore submits letters from the Judge and Subordinate Judge, and says he concurs with these officers in thinking that if the courts could more frequently resort to the sections in the realization of decrees than they do now, they would be conferring an inestimable benefit on zemindars.

Bhaugulpore.
Letter No. 72, dated the 14th January 1871, and enclosures, from the Commissioner of Bhaugulpore.

The Judge observes that it appears the courts, as a rule, do not consider it proper to appoint managers unless the property is large, and the decree-holders are numerous. The courts doubtless consider that if managers are appointed in a great number of cases they would have their files encumbered, and much additional work and responsibility would be thrown on the court in looking to the manner the managers proceed, and in inspecting the accounts, &c., which the managers would have to file, &c. If the courts, he thinks, were not so hampered, and if some enlarged powers were granted to managers so as to enable them to discharge debts and do other acts by virtue of their authority as managers independently of the court, it would be a measure fraught with benefit to the landed aristocracy and gentry.

Constant complaints are made to him of the repeal of the usury laws by Act XXVIII. of 1855,* and the consequent ruinous rate of interest needy zemindars are compelled to pay.

* *Vide* Preamble of Regulation XXIV. of 1803 and Section 3 of that Regulation. (Clarke's Bengal Regulations, edition No. 54, Vol. 1.)

Theoretically the unreserved sale of money may seem plausible, but in this country, where many zemindars confine their operations to one or two bankers, being unacquainted with other sources for pecuniary funds, the repeal of the usury law has been productive of ruin to many old families.

He thinks if the Legislature is inclined to improve the law by allowing courts a wider discretion than they at present enjoy, by enlarging the powers of managers, or by appointing a general manager for each division, or by promulgating some system which would relieve the courts of supervision of the accounts and managers, great benefit would result to needy landed proprietors.

The Commissioner entirely concurs in the views of the Judge of Bhaugulpore.

The Judge of Tirhoot says that the working of Section 243 has been satisfactory.

Patna.
Letter No. 26, dated the 4th February 1871, from the Commissioner of Patna.

The Commissioner of Patna is of opinion that the provisions of the two sections are no doubt salutary to the judgment-debtor, and would result better if the attached estates were placed under the management of the revenue authorities.

The Commissioner commends to the notice of Government the following remarks made by the Officiating Magistrate of Gya, Mr. S. C. Taylor:

"To make these two sections of real utility, and serve the laudable object for which they were evidently framed, and at the same time to apply them, so that the decree-holders shall have no reasonable ground of objection, should doubtless be the result aimed at; such is not, however, always to be attained, and when not attained, I think that the hardship occasioned would be hardly compensated by the boon conferred, and more especially so since no rules of any sort for the guidance of either the courts or the managers have been laid down. I would in the first place advocate a sparing application of the section, and secondly, I would suggest that some rules be framed for the managers themselves, in order that uniformity in the exercise of their functions may be obtained, and the decree-holders may not only receive their monies under some equitable system, but the judgment-debtors be allowed a sufficient and proper maintenance, due regard being had to their characters and the nature of their liability.

"Some such established rules would, I think, necessitate a more systematic application of these sections throughout Bengal, and lead to better and more satisfactory results.

"They would also give, if placed on a proper system, a better insight into the working of the sections, and place the authorities in surer position to detect any flaws that may exist in the administration of laws.

"Any rules that might be laid down by the local authorities would only give rise to litigation and confusion. I am consequently averse to such.

"They would, moreover, fail to achieve the object an universal rule of practice would establish. I would advocate either this, or place all such managements under the control of the revenue authorities."

The Judges of Dacca and Sylhet report that their subordinates speak well of the operations under Section 243, as tending to save property from sale, and from going out of the families who have long held it.

Dacca.
Letter No. 401, dated the 21st December 1870, from the Commissioner of Dacca.

Mr. Cockburn, the Judge of Sylhet, does not see that there is much question of public policy in the section, and disapproves of it. He remarks as follow: "I have no doubt myself that the section works well for the interest of the judgment-*debtor*, but I cannot quite see the

justice of the measure as regards the judgment-*creditor*. If a man borrows Rs. 20,000 from me for three years, and by not paying forces me to sue him and get a decree, it might no doubt be for *his* benefit to get a manager appointed and pay me in three, or five, or it may be more, years; but it would scarcely benefit *me*, and might hamper me seriously." * * * "Sympathy in this country is, as a rule, against the creditor—in my opinion unreasonably, and when we find an extravagant landholder who has run through his money, and plunged his estate into debt by riotous living, he raises his cry against a cruel creditor (on whose money he had been living probably) hurrying an old family to destruction, and forcing a sale at a tremendous sacrifice, and Section 243 backs him up, and keeps the creditor out of his money for several years."

Mr. Simson, the Commissioner, considers that, as a general rule, and for a debt under Rs. 10,000, the court should see if the amount could be realized in a reasonable time—say two years—before according sanction to attachment and management of this kind. He is unable to see why a stranger should manage property better than the natural owner, though he quite understands how an officer appointed by the court might pay the assets of property into court, whereas an owner and debtor might, and probably would, spend those assets. He does not think the sections have had any appreciable general effect on the sales of land; except in Mymensing, attachment has not been much resorted to, and in that zillah he very much doubts, even had no resort to attachment been made, whether these lands would have raised a good amount of interest on the sum decreed. It is very easy under the present Civil Procedure to keep a decree in full force.

When Mr. Simson was Judge of Mymensing he had reason to think that recourse to both these sections—at least to 243—was very much abused. He may be wrong, but he thought that a late officer, now dead many years, was almost interested in attaching properties, in order that a certain landholder might obtain farms on favourable terms. According to the arrangement, this landholder benefited from the farms. The Superintendent of Attached Estates obtained an income, the judgment-creditor got fair interest for his money, and the judgment-debtor retained ownership of the property. But, he adds, he stopped all this with the Principal Sudder Ameens under his own orders, and told them to consult him before they attached any more such estates, as he considered that the first thing to look to was whether the decree could be really satisfied in a reasonable time by attachment, and the second was that the object to be held ever in mind was the proper satisfaction of the decree, and not the payment of a fair interest on it for a number of years.

Statement A showing the operation of Section 243 of the Civil Procedure Code (Act VIII. of 1859) in the districts of the Lower Provinces.

Division.	District.	Amount of decree and date of decree.	Yearly net collections of property managed.	Expenditure, exclusive of collections.	Debts paid up from collections.	When placed under management.	When released.	Remarks.
			Rs. As. P.	Rs. As. P.	Rs. As. P.			
Bhaugulpore	Bhaugulpore and Mónghyr.	In 55 execution cases in the court of the Subordinate Judge of Bhaugulpore a manager was appointed. It is difficult to state precisely the amount of these decrees, as the claim was considerably in the process of execution.	17,844 0 0 This, however, does not show the net assets available to pay off the debts of the judgment-debtors, inasmuch as what was due to them on account of bond debts, &c., were realized during the period their property was under the manager.	1,795 0 0	33,606 0 0	18th Sept. 1865	9th Jan. 1869...	This is the only case which occurred in the Districts of Bhaugulpore and Monghyr which comprise the jurisdiction of the Subordinate Judge of Bhaugulpore. The mehal was released from managment while yet a portion of the debts of the judgment-debtors was unpaid, as they entered into arrangements with their creditors, which rendered the services of a manager superfluous.
	Purneah ...	......	......	......	......	......	......	There was only one case in this district in which a manager was appointed at the instance of the judgment-debtor.
Rajshahye ...	Rajshahye ...	1,869 13 2	6,748 11 0 Dehi Hattee, Pergunnah Govindpore, Rajshahye Towzee.	......	......	......	......	The sale of this estate was thrice postponed on the application of both the debtor and the decree-holder, on the ground of there being a likelihood of the decree being satisfied without recourse being had to sale.
		3,919 0 0	5 annas 6½ gundas and 2 krantee, share of Dehi Shaldoho, in Pergunnah Kalegawn, Kalishafa.	......	......	......	......	In compliance with the request of the judgment-debtor the sale of the estate was postponed three times to enable him to realize the amount of the decree by private sale, or by letting out a portion of the property in izara.

Division.	District.	Amount of decree and date of decree.	Yearly net collections of property managed.	Expenditure, exclusive of collections.	Debts paid up from collections.	When placed under management.	When released.	Remarks.
Rajshahye,—*concluded.*	Rajshahye,—*concluded.*	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.			
		215 0 0	122 7 9½ Talook Mouzah Dohabari and Jingabaree.	......	......	......	......	In this case a manager was appointed at the request of the judgment-debtor to realise his dues from the attached property, but he was subsequently discharged owing to his inability to pay the amount of the decree, and failure to produce the papers he was ordered by the court to submit; but the decree was eventually satisfied, partly in cash payment by the debtor himself, and partly by the sale of the talooks in Mouzah Dohabari and Jingabaree.
		......	380 9 6 Mourose izara and putnee and bromotter in Taree Shida Kalee, and mourose jote Gopal Bathan and several mourosee izaras and putnees, &c.					
	Bograh ...	......	......	......	......	......	......	The section was only once acted upon by a revenue officer in this district. The whole amount of the decree was realized and the estate released, apparently to the satisfaction of both parties.
		3,06,239 0 0 for thirteen separate decrees.	26,158 12 10 Pergunnah Khoopee, &c., Rs. 42,142-14-5, Pergunnahs Battashun, &c., Rungpore rent-roll.	......	......	......	......	A manager was appointed under Section 243, who collected a portion of the amount of the decree. In the meantime the whole of the amount was paid by the judgment-debtor by leasing the estate in putnee, and it was released.
		31,494 0 0 for eight separate decrees.	13,248 0 0 6 annas share of Chuckla Futtehpore, Rungpore rent-roll.	......	......	......	......	The greater portion of the amount was realized by the manager appointed under Section 243. The remainder was recovered by the sale of a small portion of the estate.

Rungpore ...	44,030 11 6 Six decrees.	4,063 13 2 Dehi Ekshing, Bogra, towzee No. 101.	......	......	......	......	The property was released, as the decree was satisfied by the sale of a portion of the estates after the appointment of the manager.
	......	317 11 7 Debi Shoobho o g a c h a, Bogra, towzee No. 97.	......	......	......	......	
	......	3,606 4 2 Debi Shoobho o g a c h a, Bogra, towzee No. 97, and talook Sreerampore and kismut Kathoon.	......	......	......	......	
	14,641 3 0 in two decrees.	2,446 14 10 8 annas share of Mouzah Jeebonpore, &c., Rungpore, towzee No. 212, and Mouzah K o o n t p o r e Rs. 837-14-11.	......	......	......	......	After the managet appointed under Section 243 had collected a portion of the money, the debtor paid the whole amount of one decree and a portion of the other. Consequently the manager was discharged with the consent of both parties, and the estate released.
Moorshedabad	......	......	......	......	... ..	......	No statement has been received. The provisions of Section 243 have been put in force in two Moonsiffies in this district, and in two instances only.
Dinagepore ...	......	......	......	......	......	......	No statement has been received from this district, but the Judge says that in one instance only a manager was appointed under the section. The attachment was made by the court without objection from any of the parties interested. It has been in force since June 1869, and the arrangement is said to be satisfactory.

Division.	District.	Amount of decree and date of decree.	Yearly net collections of property managed.	Expenditure, exclusive of collections.	Debts paid up from collections.	When placed under management.	When released.	Remarks.
	Bancoorah and Midnapore.	......	......	......	......	......	......	There were no applications of the provisions of the section in the Districts of Bancoorah and Midnapore. In the last district there have been several motions before the Judge, but in no case was the court satisfied that there were sufficient grounds to justify such interference.
	Burdwan ...	......	......	......	......	......	......	There were only three cases. In two of these the debtor having died, leaving a minor son, a manager was appointed to his estate, and the decree is gradually being paid off. In the third case the debtor also died under similar circumstances. A portion of his property has been sold, but the proceeds are still held in court pending the decision of the High Court on special appeal.
Burdwan ...	Hooghly ...	......	......	......	......	......	......	In this district there were several cases in which time was granted to the judgment-debtors under the section for liquidation of the decretal amount, and managers were appointed in five cases for the recovery of the amount of the decree. In two of these cases the services of

							the managers were dispensed with in consequence of the property being sold by other decree-holders in one case, and as the debtor attained his majority and obtained time for the liquidation of the debt in the other case. Small parcels of land paying rent to Government are sometimes sold at Serampore like other immovable property.
Beerbhoom ...	......	......	......	......	......	......	There was only one case in this district in which the estate of the Rajah of Bonwareeabad, which was laying involved in debts, was saved by the interference of the Judge, who appointed the younger Rajah as manager of the whole estate, entertaining at the same time an establishment in his court for the proper supervision of the work of management. This arrangement was made in June 1861, and the work was so efficiently managed that the entire debt, amounting to a sum between five or six lakhs, was satisfied before September 1864, when the manager and the supervising establishment were discharged, and the proprietors resumed unrestricted charge of their estate. The Maharajah applied to Government in 1859 for the advancement of funds, which were refused, as the creditors did not agree to the arrangements proposed.

Division.	District.	Amount of decree and date of decree.	Yearly net collections of property managed	Expenditure, exclusive of collections.	Debts paid up from collections.	When placed under management.	When released.	Remarks.
Chittagong...	Chittagong ...	......	......	......	......	......	......	No cases appear to have occurred in this district. In the Judge's Court only one case occurred, and in this no manager was appointed, but time was given for the parties to come to an amicable arrangement, which they did shortly afterwards. The court, however, is principally only one of appeal, and consequently there are very few decrees to be executed.
	Tipperah ...	......	......	......	......	......	......	In the Subordinate Judge's court there have been six cases in which a manager has been appointed. In one case the appointment of a manager led to an amicable settlement of nine out of the ten judgment-debtors. In another case the manager realized and discharged the debts of the judgment-debtors to the amount of Rs. 37,696. In the court of the Moonsiff of Nassirnugger five cases occurred in which managers were appointed, and thirteen cases in the court of the Moonsiff of Ameergunge. The Moonsiff of Noakhally says that in ten cases the provisions of the section have been applied successfully. The Moonsiff of Juggernath Diggy reports that only three cases occurred in which managers were appointed,

								and that in these cases they were soon withdrawn. In one of the two cases, however, it led to an amicable arrangement between the parties; only three cases also have been reported by the Moonsiff of Comillah.
	Dacca ...	......	......	......	......	......	......	There are ten cases in the Dacca court. Two of these are of long standing, the others are connected with decrees passed within the last few years.
DACCA ...	Sylhet ...	......	......	......	......	......	......	There are about ten or twelve cases in the courts of this district.
	Backergunge...	......	......	......	......	......	......	There are only eight cases of attachment under the section.
	Mymensing ...	......	......	......	......	......	......	In the court of the Subordinate Judge in 73 cases in which attachment was made upwards of Rs. 1,70,000 were realized. The total amount of the decree was upwards of Rs. 4,24,000. In only five cases were the decrees fully satisfied. In the court of the Moonsiff of Nettrokona attachment was made in four cases. The amount of decrees was Rs. 828, whilst only Rs. 45 were realized. The provisions of the section were had recourse to in the Moonsiffees of Ghosegunge, Nettrokona, and Nickleo only.
PATNA ...	Chumparun and Shahabad.	......	......	......	......	......	......	No cases occurred in these two districts.

Division.	District.	Amount of decree and date of decree.	Yearly net collections of property managed.	Expenditure exclusive of collections.	Debts paid up from collections.	When placed under management.	When released.	Remarks.
Patna,—*concluded.*	Patna ...	......	......	......	......	......	......	There was one case in this district in which a manager was appointed, but the measure was not attended with success.
	Sarun ...	......	......	......	......	......	......	There are only two instances in which the section has been resorted to in this district. In the case of one judgment-debtor, whose debts amounted to Rs. 4,50,310, Rs. 1,92,736 have been liquidated within the period of three years. In the other instance a manager was appointed for the realization of Rs. 35,067, and the appointment had the desired effect, the sum being liquidated within three years.
	Gya ...	......	......	......	......	......	......	In this district there have been only three instances in which managers have been appointed. In two cases the appointment was made at the request of the parties themselves. In the third case the judgment-debtor, who was heavily involved, sought for the relief of the court under Section 243, stating that the assets of his estate, though large, were insufficient to pay his debts except by degrees. He accordingly prayed that a manager might be appointed with a view to the

								payment of the debts by instalments. This request has been complied with, and a manager has been only lately appointed. The result of this appointment has therefore not yet transpired.
	Tirhoot ...	......	......	......	......	......	......	In this district the provisions of the section have been largely resorted to during the last three years, viz., 1868, 1869, and 1870; managers have been appointed in 97 cases, of which in 11 cases only decrees have been fully satisfied. In the rest the debts are in course of realization.
Presidency Division ...	Jessore ...	......	......	......	......	......	......	In 1867 the heirs of Mothooranath Achargya executed a decree against Moharani Kishtomony Dabya, a Sibait, and at their request a manager was appointed, as the land being endowed could not be sold, but she almost immediately paid up the amount of the decree. During the years 1859 to 1861 there was a manager appointed, but no particulars are given. There was only one case also in the subordinate courts since the passing of the Act.
	Nuddea and 24-Pergunnahs.	......	......	......	......	......	......	No cases occurred in the courts of these districts.

Division.	District.	Amount of decree and date of decree.	Yearly net collections of property managed.	Expenditure exclusive of collections.	Debts paid up from collections.	When placed under management.	When released.	Remarks.
		Estate of Killah Aul.	*Amount realized.*					
		Rs. As. P.	Rs. As. P.		Rs. As. P.			
Orissa ...	Cuttack ...	42,775 6 8 25th January 1868.	1,34,167 7 0	......	31,357 13 3	18th April 1868	......	The provisions of this section have been put in force only in four instances since the passing of the Act.
		Estate of Killah Kunika. 3,59,134 7 1 17th Nov. 1862.	5,75,015 1 1	......	2,27,989 8 2	17th Nov. 1862	......	
		*Estate of Killah Koonjung.** 3,18,973 0 11 23rd Feb. 1864.	1,06,382 10 4	......	42,997 1 7	13th May 1864	......	
		Talook Roobkhund, &c. 19,625 6 9 30th Jan. 1869.	12,144 5 0	......	1,400 0 0	14th April 1869	......	
	Pooree ...	......	......	......	......	......	......	Within the last five years only one instance has occurred in which a manager was appointed by the court, and in that case the lands were under attachment for less than seven months. In other Moonsiffees no estates have been taken charge of by the court under the section.
	Balasore ...	......	......	......	......	......	......	No case has occurred in which the section has been applied.
Chota Nagpur	Hazareebaug	......	......	......	......	......	......	From the year 1862 to date 145 estates, whose accumulated debts amounted to Rs. 2,99,362, have been taken under the Political Department. Of these 21 estates have been released to the owners free of debt; 40 estates have been released, the debts being compromised; 15 estates have been sold,

								being found to be irretrievably involved, after being some time under sequestration. Enquiries are being made regarding five estates, thus leaving 64 estates now under the Political Department, all of which there are hopes will be restored sooner or later to their owners freed from debt. Between the years 1862 to date 118 estates have been sold without being kept under sequestration, being found to be so involved as to render it useless to attempt to bring them under the management of that department. Thus one-half of the number of estates, which would, under ordinary circumstances, have been brought to the hammer in the Regulation Provinces, have been preserved to their owners.
LOHARDUGGA ...	......	......	......	......	......	......	......	Previous to 1862, and from 1862 to 1870, 289 estates were under attachment, of which the debts amounted to Rs. 33,95,511-0-11; 141 estates were released on the debts being satisfied; 29 estates were released on the debts being compromised; 8 estates were sold after being some time under attachment; 39 estates were sold without being brought under attachment; 2 estates were released owing to the assets being insufficient to cover the annual interest (subsequently sold); and 117 estates remain under attachment.

* This property was sold on the 18th May 1868 for Rs. 5,50,000.

Division.	District.	Amount of decree and date of decree.	Yearly net collections of property managed.	Expenditure exclusive of collections.	Debts paid up from collections.	When placed under management.	When released.	Remarks.
Maunbhoom ...	......	......	......	......	......	......	......	From 1858 up to 1870 168 estates were under attachment, of which the debts amounted to Rs. 4,40,278; 45 estates were released on the debts being satisfied; 19 estates were released on the debts being compromised; 7 estates were sold after being sometime under attachment; and 108 estates remain under attachment.
Singbhoom ...	......	......	......	......	......	......	......	From 1862 to date 35 estates were under attachment, of which the debts amounted to Rs. 24,513-6-3; 11 estates were released on the debts being satisfied; 7 estates were released on the debts being compromised; 6 estates were sold after being some time under attachment; and 11 estates remain under attachment.
Assam and Cooch Behar.	......	......	......	......	......	......	......	No action has ever been taken in the civil courts of either division under this section.

Statement B showing the operations of Section 244 of the Civil Procedure Code, Act VIII. of 1859, in the Districts of the Lower Provinces.

1	2	3	4	5	6	7	8	9	10	11
Division.	District.	Name of Mehal.	Amount of debt.	Date of interference by Collector.	Nature of arrangements made.	Total income from time of interference up to date, including realizations by sale of movable property.	Total expenditure in Government revenue and miscellaneous expenses.	Amount devoted towards reduction of debt.	Balance of debt now due.	Remarks.
			Rs. As. P.			Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.	
Orissa ...	Cuttack ...	Kunikah...	4,69,742 0 0	10th April 1862.	Payment by instalments from the available profits in proportion to the amount due to each creditor under orders of the civil court.	5,75,015 0 0	3,46,463 0 0	2,27,989 0 0	5,06,735 0 0	At the instance of the Rajah of Kunikah the estate was, with the sanction of Government, brought under attachment by the Collector in the early part of 1862, with a view to the liquidation of the debts, and to prevent its being brought to sale in execution of decrees. Most of the creditors agreed to the attachment, which was to extend over a period of ten years, others demurred to the arrangement, and when their objections were overruled by the local civil court, appealed to the High Court. The result of this appeal was that the estate was not to be brought to sale, but that the appealing creditors were to receive their dues first of all and within a prescribed period, which it was within the discretion of the local court to

1	2	3	4	5	6	7	8	9	10	11
DIVISION.	District.	Name of Mehal.	Amount of debt.	Date of interference by Collector	Nature of arrangements made.	Total income from time of interference up to date, including realizations by sale of movable property.	Total expenditure in Government revenue and miscellaneous expenses.	Amount devoted towards reduction of debt.	Balance of debt now due.	REMARKS.
ORISSA,—concluded.	Cuttack,—*concluded.*	Kunikah,—*concluded.*								extend on cause being shown. The estate has, therefore, since 1862 remained under the charge of the Collector, who has devoted all surplus proceeds to the liquidation of the debt. The civil court has during this interval rejected all applications to enforce execution by sale. In 1865 the proprietor was declared a lunatic, and the estate was brought under the Court of Wards. This, however, did not affect the position of the Collector with regard to the civil court. The Government revenue of the estate is Rs. 20,408 a year; at the time of attachment the rental, according to the Rajah's papers, only amounted to Rs. 61,900; it has been gradually raised till it now reaches Rs. 97,800; after providing for the yearly accumulating interest the debt now amounts to Rs. 5,06,735, or in excess of what it was ten years ago. It should, however, be

										stated that in the years of the famine the entire rents for one-and-half years had to be remitted; that the estate suffered very severely, and a considerable amount of land was thrown out of cultivation, which prevented the realization of the full rental in subsequent years. The account shows actual realizations and payments up to date, but does not include the rent for 1870-71, which is now due and in course of realization. It is calculated that before the end of the current financial year a further sum of Rs. 63,700 will be realized and devoted entirely to the reduction of the debt, which, after adding the interest of the current year, would, at the close of March, stand at Rs. 4,71,460. It should also be added that the sum shown in column 2 includes miscellaneous debts and money due on bond for which no decrees have been obtained in the civil court.
	Pooree and Balasore.	......	......	......	......	......	......	......	......	No case has occurred in which this section has been applied.
BURDWAN ...	......	......	......	......	......	......	......	......	......	No proceedings under the section have ever been taken in any of the districts of this division.
CHITTAGONG ...	......	......	......	......	......	......	......	......	......	Since the passing of Act VIII. of 1859 there have been no cases in which the Collectors of the districts of this division have been directed to act under the section.

1	2	3	4	5	6	7	8	9	10	11
DIVISION.	District.	Name of Mehal.	Amount of debt.	Date of interference by Collector.	Nature of arrangements made.	Total income from time of interference up to date, including realizations by sale of movable property.	Total expenditure in Government revenue and miscellaneous expenses.	Amount devoted towards reduction of debt.	Balance of debt now due.	REMARKS.
ASSAM AND COOCH BEHAR	......	......	......	......	......	......	......	......	......	The section has never been brought into operation in the execution of decrees of civil courts in either of these divisions.
DACCA ...	......	......	......	......	......	......	......	......	......	No action connected with the section has ever been taken in the courts of this division lately.
RAJSHAHYE ...	......	......	......	......	......	......	......	......	......	The section does not apply to the districts of this division, as the Collectors have not been appointed under the latter part of Section 248, to hold sales of land paying revenue to Government on the requisition of the civil courts.
PATNA ...	......	......	......	......	......	......	......	......	......	There has not been a single case under the section in any of the districts in this division.
BHAUGULPORE ...	......	......	......	......	......	......	......	......	......	None of the Collectors of this division having been especially empowered under Section 248 of the Act to hold sales of the estate attached to the civil court, resort was not had to the provisions of Section 244.
CHOTA NAGPORE	......	......	......	......	......	......	......	......	......	*See* Statement A, column of Remarks.
PRESIDENCY DIVISION.	......	......	......	......	......	......	......	......	......	The provisions of the section were never resorted to in any of the districts of this division.

No. 205, dated Camp Jeriya, the 10th February 1871.

From—Colonel E. T. DALTON, C. S. I., Commissioner of the Chota Nagpore Division.

To—The Offg. Junior Secretary to the Government of Bengal.

WITH reference to your docket No. 4553 of the 13th October 1870, I have the honour to state that, under the orders of Government of 13th October 1833, and practice followed from the first formation of the South-Western Frontier Agency, immovable property was not sold in liquidation of debts, but under the orders of the Agent the estate of the debtor was sequestrated, and the assets, after defraying expense of management, and in most cases a small allowance for the maintenance of the proprietor, appropriated to the payment of the creditor.

2. When Act VIII. of 1859 was extended to this Province, it was with a reservation of the powers that had so been confided to the Agent in the following terms: "As for good and sufficient reason it is considered expedient that the present restrictions on the sale of landed property in those districts should continue in force, Section 205 of the aforesaid Act is hereby declared, subject to the proviso, that no sale of lands shall be made in the Districts of Hazareebaugh, Lohardugga, and Maunbhoom, without the sanction of the Commissioner of the Province had and obtained as heretofore".

3. The procedure that is now followed is correctly described in the annexed copy of a letter* from Colonel Boddam, Deputy Commissioner of Hazareebaugh, paragraphs 5 to the end.

* No. 928, dated 7th November 1870.

4. It will be seen that estates are now sold if it be found that the debt cannot be liquidated within some reasonable time by their sequestration. Colonel Boddam shows how this has worked from the year 1862 to the present time.

5. Similar statistics from the other districts I have not yet received, but the system is the same throughout, and I cannot venture any longer to delay replying to the requisition.

6. There is nothing that I know of to prevent the civil courts directing the sequestration of the estates under Sections 243 and 244 without reference to the head of the Province, but this has not been done. The courts generally act on *application* for *sale* of the estate which is submitted to the Commissioner, and if he declines to sanction the sale, he directs sequestration in lieu.

7. In paragraph 2 of his letter Colonel Boddam states that before the introduction of Act VIII. interest was disallowed on debts for which estates were sequestrated, but there was no rule to this effect. It was sometimes done under peculiar circumstances, as when a renewed bond had been given for a sum enormously in excess of the original

sum borrowed, and the bond decreed on; but there is now no interference with the decree, whatever it may be.

No. 928, dated Hazareebaugh, the 7th November 1870.

From—Lieutenant-Colonel H. M. BODDAM, Deputy Commissioner of Hazareebaugh.

To—The Commissioner of Chota Nagpore.

IN acknowledging the receipt of your memorandum No. 2859, dated 21st October 1870, covering correspondence as per margin, I have the honour to inform you that long before Act VIII. of 1859 passed into law a procedure very similar to that laid down in Sections 243 and 244 of the said Act was in force in this district, with this exception—that when once a judgment-debtor's landed property was attached and placed under the management of the Political Department, all further interest on the decree and costs was disallowed.

2. A proclamation was also issued declaring the judgment-debtor whose estate had been attached for debt incapable of contracting further debts; and suits brought for bonds executed during the period judgment-debtor's estate was under sequestration were always dismissed.

3. Since Act VIII. of 1859 has been extended to this district, the High Court have ruled that a decree-holder is entitled to all that is given in the decree; and that if a decree-holder holds a decree giving him interest till the whole decree is liquidated, he must be paid the interest.

4. The rule, too, rendering a person whose estate has been sequestrated owing to his inability to pay his debts incapable of contracting further debt, has fallen into desuetude.

5. In this district the following practice prevails:

6. A decree-holder is always made to proceed against a judgment-debtor's movable property in the first instance.

7. When this source has been exhausted or cannot be discovered, the decree-holder is made to give in a list, as far as practicable, of all the immovable property of the judgment-debtor.

8. The order for attachment then issues, and any objections to attachment that may be made are heard and decided on the civil side.

9. The estate is then made over to the Political Department under the sanction of the Commissioner.

10. A full inquiry is then made into the assets of the estate, and if it is found that there is a reasonable probability that the decree or decrees can be paid off with interest, the estate is kept in the Political Department, the accumulated funds paid away to the decree-holders every quarter, a small percentage just sufficient to cover expenses of management being charged against the estate.

11. Should it, however, be found that the assets are such that there is no hope of the decrees being paid off by management under the Political Department, the papers are returned to the civil side of the court with a report to that effect, the Commissioner is addressed, pointing out that the estate is hopelessly involved, and his sanction requested to the sale of the estate, and on the Commissioner's sanction being obtained, the usual proclamation of sale is issued, and the estate sold if the judgment-debtor has not come to terms in the meanwhile with his creditors by public auction.

12. It sometimes happens that when an estate is first sequestrated, the assets are found sufficient to pay off the decrees under execution; but other decrees come pouring in, until it is found that the assets will not pay even the interest, in which case the papers are all sent to the civil side of the court, with the intimation that it is useless to keep the estate under management any longer, and then the procedure detailed in paragraph 11 is gone through, the estate is sold, the judgment-debtor who first attached the estate being the first paid, and the balance, if any, rateably divided among the remaining decree-holders.

13. When the whole debt has been liquidated the estate is restored to the proprietor, together with a full account of all receipts and disbursements, and with any balance remaining to credit of the estate.

14. From the year 1862 to date 145 estates, whose accumulated debts amounted to Rs. 2,99,362, have been taken under the Political Department.

15. Of these twenty-one estates have been released to the owners free of debt.

16. Forty estates have been released, the debts being compromised.

17. Fifteen estates have been sold, being found to be irretrievably involved, after being some time under sequestration.

18. Inquiries are being made regarding five estates, thus leaving 64 estates now under the Political Department, all of which there are hopes will be restored sooner or later to their owners freed from debt.

19. Between the years 1862 to date 118 estates have been sold without being kept under sequestration, being found to be so involved as to render it useless to attempt to bring them under the management of that department.

20. Thus more than one-half of the number of estates which would under ordinary circumstances have been brought to the hammer in the Regulation Provinces have been preserved to their owners.

No. 1123, dated Cuttack, the 6th February 1871.

From—T. E. RAVENSHAW, Esq., Commissioner of the Orissa Division.

To—The Offg. Secretary to the Government of Bengal, Judicial Department.

IN reply to your No. 4553 of 13th October 1870, I have the honour to state that in the Districts of Pooree and Balasore Sections 243 and 244 have been inoperative, no case having occurred in which they have been applied. In Cuttack only one estate has been brought under the Collector's management; the details are fully set forth in the enclosed letter and statement received from the Collector of Cuttack, No. 349A of 24th January 1871. The Civil Judge's report No. 24 of 1st February also shows the Sections 243 and 244 are seldom resorted to, and when put in force are not found to work satisfactorily; little or no effect has been produced on sales of land under civil courts' decrees.

2. The Sessions Judge's reply has only just come to hand, and I venture to submit it, and the Cuttack Collector's in original, as your call for information is urgent. If it is proposed to legislate on the subject, I would request reference to the correspondence connected with the condition of Cuttack Peshkush Mehals, which concluded with letter No. 1358, from the Secretary to Government of India, dated 13th December 1867, to address of the Junior Secretary to Government of Bengal, particularly to paragraphs 10 to 12 of my report No. 660 of 2nd September to the Board of Revenue. It is an undoubted fact that many of the old families and properties in Orissa have been ruined by our Civil Procedure Sections 244 and 245, which were intended to operate for their protection, and to save them from utter destruction.

3. Return of original enclosures is solicited when no longer required.

No. 349A, dated Camp Jajipore, the 24th January 1871.

From—W. MACPHERSON, Esq., Collector of Cuttack.

To—The Commissioner of the Orissa Division.

IN reply to your No. 782 of 22nd October, I have the honour to state that in this district Kunika is the only estate regarding which the Collector has interfered under Section 244, Civil Procedure Code.

At the instance of the Rajah of Kunika the estate was with the sanction of Government brought under attachment by the Collector in the early part of 1862, with a view to the liquidation of the debts and to prevent its being brought to sale in execution of decrees. Most of the creditors agreed to the attachment, which was to extend over a period of ten years, others demurred to the arrangement, and when their objections were overruled by the local civil court, appealed to the High Court. The result of this appeal was that the estate was not to be

brought to sale, but that the appealing creditors were to receive their dues first of all and within a prescribed period, which it was within the discretion of the local court to extend on cause being shown. The estate has therefore since 1862 remained under the charge of the Collector, who has devoted all surplus proceeds to the liquidation of the debt, the civil court has during this interval rejected all applications to enforce execution by sale. In 1865 the proprietor was declared a lunatic, and the estate was brought under the Court of Wards; this, however, did not affect the position of the Collector with reference to the civil court.

I annex a statement showing the result of the management with full explanatory comments, and will merely remark that as the statement shows we have hitherto merely been able to provide for the yearly interest, and that the debt is in no way reduced. With reference to the action of the civil court in cases under Section 243, the Judge, I presume, will furnish all the information required, as the Collector has nothing to do either with the accounts or the management. I will merely remark that several estates, such as Coojung and Aul, have been managed by the Judge under Section 243, and I believe the management has resulted in little benefit to the estate.

Statement showing debts of Killah Kunika at time of attachment in 1862, *the total amount realized, and the total amount paid from time of attachment to date.*

1. Name of mehal—Kunika.
2. Amount of debt—Rs. 4,69,742.
3. Date of interference by Collector—10th April 1862.
4. Nature of arrangements made—Payment by instalments from the available profits in proportion to the amount due to each creditor under orders of the civil court.
5. Total income from time of interference up to date, including realizations by sale of moveable property—Rs. 5,75,015.
6. Total expenditure on Government revenue and miscellaneous expenses—Rs. 3,46,463.
7. Amount devoted towards reduction of debt—Rs. 2,27,989.
8. Balance of debt now due—Rs. 5,06,735.

Remarks.—When the estate was first brought under attachment the debts, as represented by the Rajah, amounted to Rs. 3,59,134, but it appeared afterwards that they had been considerably under-stated, and amounted in reality to Rs. 4,69,724. The Government revenue of the estate is Rs. 20,408 a year. At the time of attachment the rental, according to Rajah's papers, only amounted to Rs. 61,900; it has been gradually raised till it now reaches Rs. 97,800. After providing for the yearly accumulating interest, the debt now amounts to Rs. 5,06,735, or in excess of what it was ten years ago. It should, however, be stated that in the years of the famine the entire rents for one-half years had to be remitted, that the estate suffered very

severely, and a considerable amount of land was thrown out of cultivation, which prevented the realization of the full rental in subsequent years. The account shows actual realizations and payments up to date, but does not include the rent for 1870-71, which is now due and in course of realization. It is calculated that before the end of the current financial year a further sum of Rs. 63,900 will be realized and devoted entirely to the reduction of the debt, which, after adding the interest of the current year, would, at the close of March, stand at Rs. 4,71,460. It should also be added that the sum shown above in (2) includes miscellaneous debts and money due on bond for which no decrees have been obtained in the civil court.

W. MACPHERSON,
Collector.

No. 24, dated Cuttack, the 1st February 1871.

From—R. ALEXANDER, Esq., Judge of Cuttack.
To—The Commissioner of Cuttack.

I BEG to forward herewith the statements called for in your memorandum No. 781, dated 22nd October last. I regret that there should have been such delay in sending this statement, but you will observe from the report of the Subordinate Judge submitted with this letter that the delay was unavoidable, and the report only reached this Office on the 28th ultimo.

2. It appears from the Subordinate Judge's report that the provisions of Section 243 have been put in force only in four instances since the passing of the Act.

3. The Moonsiff of Pooree states that within the last five years only one instance has occurred in which a manager has been appointed by the court, and in that case the lands were under attachment for less than seven months. In the other Moonsiffees no estates have been taken charge of by the court under Section 243. No instances under Section 244 have occurred.

4. It will be seen from the above that the provisions of the sections alluded to are not as a rule brought into use in Orissa, and the few cases in which they have been would have no effect on sales of land under decree of the civil court.

5. The report and statements submitted by the Subordinate Judge, and the report received from the Moonsiff of Pooree, are submitted herewith in original for your information.

No. 4, dated Cuttack, the 27th January 1871.

From—W. WRIGHT, Esq., Subordinate Judge of Cuttack.
To—The Judge of Cuttack.

WITH reference to the letter of the Secretary to the Government of India in the Home Department, No. 1715 of the 22nd September last, I have the honour to report that Section 244 of the Civil Code does not

apply to the Province of Orissa, and that during the eleven and-a-half years that the Code has been in force this court has deemed it necessary on four occasions only to give effect to the provisions of Section 243 by placing the attached property under management, a number much too small to have appreciably affected the sales made, which have on an average been 82 per annum.

2. The statements submitted herewith have been very carefully prepared, and will, I trust, be found to contain all the information required. They show unmistakably that in three at least of the four instances in which the court was induced to exercise its forbearance no benefit has resulted to the judgment-debtor, inasmuch as his debt has not by it been reduced in any way.

3. I regret the delay that has occurred in the submission of this report, but it has been, I may state, altogether unavoidable, owing to numerous references to records of previous years.

No. 2.

Statement showing the collections and disbursements from and on account of the under-mentioned estates attached by order of the Subordinate Judge of Cuttack, and to which managers have been appointed under Section 243 of the Code of Civil Procedure.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
					DISBURSEMENTS									
					ON ACCOUNT OF									
Property attached.	Date of order for attachment.	Date on which property was brought under attachment.	Amount realized from property while under attachment.	Period for which such realization was made.	Government revenue.	Zemindary dâk charges.	Income tax.	Chowkidary tax.	Establishment.	Stationery and contingencies.	Judgment-debtor's subsistence allowance.	Total.	Amount paid to decree-holders.	Balance in hand.
			Rs. As. P.		Rs. As. P.	Rs. As. P.	Rs.	Rs.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.
Killah Aul, &c.	25th Jan. 1868.	18th April 1868.	1,34,167 7 0	From 18th April 1868 to 31st Dec. 1870.	93,323 0 4	497 5 9	...	...	3,624 15 10	741 9 4	4,622 10 6	1,02,809 9 9	31,357 13 3	...
" Kunika	17th Nov. 1862.	17th Nov. 1862.	5,75,015 1 1	From 17th Nov. 1862 to 31st Dec. 1870.	1,32,649 0 0				2,13,814 10 10			3,46,463 10 10	2,27,989 8 2	561 14 1
" Koojung	23rd Feb. 1864.	13th May 1864.	1,06,382 10 4	From 13th May 1864 to 18th May 1868.	26,262 7 6	146 6 0	1,907	128	4,523 3 6	393 13 6	30,024 10 3	63,385 8 9	42,997 1 7	...
Zemindary Talook Poobkhund, &c.	30th Jan. 1869.	14th April 1869.	12,144 5 0	From 14th April 1869 to 31st Dec. 1870.	10,744 5 0	...	...	...	......	...	......	10,744 5 0	1,400 0 0	...

W. WRIGHT,
Subordinate Judge.

No. 3.

Statement showing the amounts due by judgment-debtors whose estates have been attached by order of the Subordinate Judge of Cuttack and managed under the provisions of Section 243, Act VIII. of 1859.

Name of judgment-debtors.	Amount of debt at the time of attachment.	Interest on the same from date of attachment.	Total.	Amount paid.	Balance due.
	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.
Maharajah Puddolab Deb, Rajah of Killah Aul.	42,775 6 8	24,782 3 10	67,557 10 6	31,357 13 3	36,199 13 3
Rajah Puddolab Bhunj, Rajah of Killah Kunika.	3,59,134 7 1	3,64,278 0 0	7,23,412 7 1	2,27,989 8 2	4,95,422 14 11
Rajah Bidyadhur Sund, Rajah of Killah Koojung.*	3,18,973 0 11	2,21,602 2 8	5,40,575 3 7	42,997 1 7	4,97,578 2 0
Mussamut Munmohini-Dabea and Prosunno Moi Dabea, zemindars of Talook Poobkhund, &c.	19,625 6 9	3,557 8 0	23,182 14 9	1,400 0 0	21,782 14 9

* This property was sold on the 18th May 1868 for Rs. 5,50,000.

W. WRIGHT.
Subordinate Judge.

Dated Pooree, the 30th October 1870.

From—Baboo GRISH CHUNDER CHATTERJEE, Moonsiff of Pooree.
To—The Judge of Cuttack.

WITH reference to your memorandum No. 233, annexed to a copy of letter from the Secretary to the Government of India, dated 22nd September 1870, I have the honour to state that within the last five years there has been only a single case in which a manager under Section 243 of Act VIII. of 1859 was appointed by this court. This was on the 14th September 1868. The attached property appearing to belong to a third party who laid claim to it was, however, released on the 30th March 1869. The greater part of the decrees of this court being for small sums of money, it is generally deemed inexpedient to appoint managers under the said section. Judgment-debtors very seldom think of bearing the expenses attendant upon the appointment of a manager for satisfaction of decrees of sums which they can more conveniently procure by mortgage of their properties.

With regard to Section 244 of the above Act there has not been a single case within the last five years in which the Collector objected to the sale of attached lands on grounds of public inconvenience. On the whole I beg to submit that the sections referred above are almost wholly inoperative as far as sales under decrees of this court are concerned.

No. 1.

Statement showing result of attachments made of properties falling within the description of those referred to in Section 243 of the Code of Civil Procedure.

	Attachments made		... ...	2,733
SALES NOT PROCEEDED WITH.	On default of the decree-holders		...	426
	On payment of the debt...	In part	...	567
		In full	...	791
	On appointment by the court of a manager			4
	Sales made ...		... ...	945

CUTTACK;
The 27th January 1871.

W. WRIGHT,
Subordinate Judge.

No. 427A, dated Nynee Tâl, the 26th July 1871.

From—C. A. ELLIOTT, Esq., Officiating Secretary to the Government of the North-Western Provinces.

To—The Secretary to the Government of India, Home Dept.

I AM directed to acknowledge receipt of your letter No. 1716, dated 22nd September 1870, and subsequent reminders, requesting the submission of a report of the working of Sections 243 and 244 of Act VIII. of 1859 (Civil Procedure Code).

2. In reply, I am directed to forward, for the information of His Excellency the Governor General in Council, copy of a report* received from the Board of Revenue on the working of Section 244, and to state that the High Court, although repeatedly called upon to furnish a report on the subject, have as yet failed to do so. An urgent reminder has this day been issued to them, and on receipt of a reply it will be submitted with an expression of His Honor's views on the subject.

* No. 64, dated 27th January 1871.

No. 64, dated Allahabad, the 27th January 1871.

From—A. COLVIN, Esq., Secretary to the Board of Revenue, North-Western Provinces.

To—The Offg. Secretary to the Government of the North-Western Provinces.

I AM directed to acknowledge the receipt of your endorsement No. 487 A, dated the 31st October last, in the Judicial (Civil) Department, forwarding copy of a letter from the Secretary to the Government of India, Home Department, calling for a full report on the working of Sections 243 and 244 of the Civil Procedure Code, with such statements

and details as will illustrate the effects which these sections have on sales of land under decrees of the civil courts, and requesting that the Board will furnish the required report.

2. In reply, I am desired by the Board to forward the accompanying statements, together with a memorandum drawn up in the Office.

3. The Board observed in their annual administration report for 1863-64 that the duty of the Collector is *confined* to arranging for the satisfaction of the decree by *temporary alienation* of the land, or share in cases where sale, if avoidable, would be objectionable.

4. But this fact had been lost sight of by the Board in 1862 when they drafted Circular M, dated 16th January 1862, in which they "pointed out the necessity of a more vigilant and effective endeavour to bring the provisions of Section 244, Act VIII., 1859, into operation wherever sale in execution of decrees can be stayed *by the substitution of some other arrangement for the temporary alienation of the land*".

5. The Board were not competent to direct the substitution of other "mitigative processes" for temporary alienation, the only "mitigative process" open to the Collector under the Act.

6. The instructions contained in Government circular No. 1013 A, dated 14th August 1860, re-published with Board's circular No. 21, dated 21st May 1867, are strictly in conformity with the provisions of Section 244. But the tendency of the wording of Government circular No. 78 A, dated 4th July 1861, also re-published with Board's circular No. 21 of 1867, is to divert the attention of Collectors from the fact that it is their duty not to wait for an application from the judgment-debtor, but to take the initiative whenever they consider the sale of property attached in satisfaction of a decree objectionable, and in such cases to represent the same to the court, &c.

7. The ill success which has attended the working of Section 244 must be attributed not to the circular which prescribed correctly the mode in which Section 244 should be worked, and which superseded the former incorrect circular, but to the narrow limits within which the law itself circumscribes the Collector's authority. Section 244 authorizes the Collector to arrange with the sanction of the court for only one, and that the least feasible "mitigative process", which the civil court might itself have adopted on the application of the judgment-debtor under Section 243 of the Act.

8. The cases with which Collectors have to deal are mostly those in which the judgment-debtor has been unable to come to terms with his opponent, or to obtain assistance from his own brotherhood or co-sharers, for whose interest it may be in many instances to force on the sale, with the object of purchasing the judgment-debtor's interest.

9. It is not easy to find outsiders willing to take the land on lease or mortgage on such terms as will satisfy the decree within a reasonable period. Who is to give the security for the amount of the decree or for

the value of the land demanded by Section 244? The judgment-debtor, as a rule, cannot, and the lessee or mortgagee will not.

10. The Board would attribute the failure of Section 244 to secure the object which it was designed to secure, not to the apathy of district officers, but to the difficulties which surround the working of the section. From the sale statements which are submitted to the Board it is evident that Collectors are not wanting in endeavours to stave off the permanent alienation of the rights not only of proprietors, but also of ryots with rights of occupancy.

11. I am to add that in the opinion of the Board the High Court might with advantage be asked to express an opinion on the working of Section 243, the working of which does not fall within the immediate cognizance of the Board.

Memorandum by A. Colvin, Esq., *Secretary to the Board of Revenue, North-Western Provinces, on the effect of Sections* 243 *and* 244, *Civil Procedure Code,—dated Allahabad, the 27th January* 1871.

The Government of India called upon the North-Western Government to submit at their early convenience a full report on the working of Sections 243 and 244 of the Civil Procedure Code, "with such statements and details as will illustrate the effects which these sections have on sales of land under decrees of the civil courts". Government forwarded copy of the letter to the Board of Revenue, with the request that the Board would furnish the required report.

In order* to comply with the wishes of Government, it has been necessary to draw up tables illustrating the working of the Act. These tables have been drawn from two sources,—*first*, from the Collectors' annual reports since 1860; and *secondly*, from the annual reports of the Sudder Court. Extracts have also been made of so much as seemed needful of passages in the annual reports of the Board and Court, respectively, dealing with this subject.

* It is not clear why the Board should be called on to report regarding Section 243, which deals with cases of postponement by intervention of the courts only. The action of revenue officers is taken under Section 244.

The table prepared from the Collectors' annual reports is unreliable. Caution to this effect has more than once been given by Commissioners in forwarding their annual reports, as for example, by the Commissioner of Agra in his report for 1863-64 (page 13, paragraph 54 of Board's report for that year). So, again, by the Board in paragraph 39 of their report for 1862-63. Collectors seem to have frequently reported under this section cases in which they had postponed sale on the judgment-debtor giving security, though the law gives no authority for such a step. Whatever the effect of such action on their part, it was wholly

without authority under Section 244, and cannot be quoted in illustration of the working of that section. The return should have been strictly confined to cases in which sale had been postponed by the judgment-debtor temporarily alienating his property, and making arrangements for payment of the decree within a reasonable time.

The returns for the marginally named districts for the years severally specified against them have not been included in Statement A.

1860-61—Dehra.
Futtehpore.
1861-62—Etah.
Goruckpore.
1862-63—Bijnour.
Etawah.
Jounpore.
Azimgurh.
Mirzapore.
Benares.
Ghazeepore.
1865-66—Cawnpore.
Futtehpore.
Panda.
Humeerpore.
1866-67.—Gurhwal.

There was delay in getting them from our records; the case was pressing; and the results to be obtained by waiting till they were produced did not seem of such importance as to justify our keeping the case over.

Statement A exhibits in the 4th column the number of proprietary mutations by sale under orders of court shewn in the Collectors' annual reports as having been registered in the year under report. Column 5th shews the number of cases in which the Collector's action has been successful; the total of the two figures entered in column 6th as the total number of cases in which mutation has been contemplated. In column 7th is shewn the result of the Collector's interference, *viz.*, the proportion borne by cases in which sale has been averted to the whole amount of cases in which sale was originally contemplated.

If this statement were to be trusted, it would seem that the action taken by Collectors under the rule had been eminently successful, the proportion of cases in which sale has been averted being in 1861-62 as high as 31 per cent., and from 1862-63 to 1864-65 never falling below 20. In some districts, such as Meerut, Bareilly, Agra, Furruckabad, Etawah, Azimgurh, the percentage runs very high indeed. It is noticeable that from 1867 the Board's returns shew scarcely any action taken unden Section 244; but unfortunately these are the years during which statistics of the court cannot be obtained, as the court during those years had issued no report.

The figures furnished by the High Court form the subject of Statement B. It will be noticed that these refer not to cases (*i. e.*, to *decrees*), but to *properties*; and one property may have been sold in satisfaction of various decrees. These statements, therefore, while they may be accepted as strictly accurate in themselves, cannot be employed to check the returns annually furnished to the Board. It is doubtful whether the court's figures give temporary alienations *proper* under Section 244, or the results of any and all such devices as Collectors have been seen to have resorted to. For Section 243 they doubtless give *bonâ fide* results. It will be seen from these statements that the proportion in

which in these Provinces courts and Collectors have annually succeeded in averting sale of properties by temporary alienations is as follows:

	UNDER SECTION 243. *Judicial Courts.*	UNDER SECTION 244. *Revenue Officers.*
1860	Figures not given.	5 per cent.
1861	4 per cent.	5 "
1862	10 "	14 "
1863	9 "	11 "
1864	15 "	11 "
1865	7 "	9 "
1866	10 "	8 "
1867	15 "	8 "

These figures have been obtained from 1862 to 1867 for Section 243 by taking the percentage of column 3 on the total of columns 5 and 8. These two columns give the whole number of properties, and column 3 shows the number which, but for the action of the court, would have been brought to the hammer. Similarly, the figures for Section 244 have been obtained by taking the percentage of the figures in column 4 on the totals of 5 and 8. The united action of the courts and the district officers under the two sections combined will be seen to have been very marked, ranging as high as 26 per cent. of all properties threatened in 1864, and never since 1862 falling below 16 per cent. For 1860 and 1861 the figures have been taken from the statements in paragraphs 15th and 16th of the court's report for 1861, and similarly calculated.

On the whole the comments of Collectors and the Board during the successive years that Section 244 has come under review have not been favourable. The reasons are these—*first*, that where an arrangement is in any way possible, it, is arranged by the parties themselves; *secondly*, that should they fail to arrange it, the action of the courts is very generally sufficient; and *thirdly*, that if by alienating his property the judgment-debtor could have hoped to pay the interest or satisfy the decree, he would not have allowed himself to be sued. But in the face of the figures furnished by the court these arguments lose something of their force. It is no small thing that even 8 per cent. of the property threatened with sale should be saved. If the sections are not productive of so much good as may have been anticipated, it can be said of them with justice that their action is distinctly perceptible; and that wherever exerted it may be presumed to be beneficial. Of later years, *i. e.*, the last three, the action of Collectors seems to have slackened, and in this year's reports (1869-70) I see that little or nothing has been done.

The Sudder Court, while noticing the action of subordinate courts in respect of Section 244, have refrained from expressing an opinion on its efficacy. In their report for 1863 they recapitulate the opinions of subordinate officers without expressing their own.

Statement A.

1	2	3	4	5	6	7	8
Division.	District.	Year.	Number of proprietary mutations registered by sale and orders of Court.	Number of cases in which the Collector has averted sale under Section 244, Civil Procedure Code.	Total number of cases in which mutation by sale, under order of Court, was contemplated.	Percentage of cases in which sale has been averted under Section 244.	REMARKS.
	Dehra Doon	1860-61	......	......	......	......	
		1861-62	......	......	......	......	
		1862-63	......	......	......	......	
		1863-64	1	......	1	......	
		1864-65	......	......	......	......	
		1865-66	......	......	......	......	
		1866-67	2	......	2	......	
		1867-68	......	......	......	......	
		1868-69	1	......	1	......	
MEERUT.	Saharunpore	1860-61	171	25	196	12·75	
		1861-62	167	8	175	4·57	
		1862-63	149	5	154	3·24	
		1863-64	129	17	146	11·64	
		1864-65	102	1	103	·97	
		1865-66	112	4	116	3·44	
		1866-67	102	......	102	......	
		1867-68	135	6	141	4·25	
		1868-69	160	......	160	......	

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1	2	3	4	5	6	7	8
Division.	District.	Year.	Number of proprietary mutations registered by sale and orders of Court.	Number of cases in which the Collector has averted sale under Section 244, Civil Procedure Code.	Total number of cases in which mutation by sale under order of Court was contemplated.	Percentage of cases in which sale has been averted under Section 244.	Remarks.
	Mozuffernugger ...	1860-61	82	1	83	1·20	
		1861-62	116	8	124	6 45	
		1862-63	67	2	69	2·89	
		1863-64	78	8	86	9·30	
		1864-65	66	......	66	......	
		1865-66	81	......	81	......	
		1866-67	90	1	91	1·09	
		1867-68	95	1	96	1·04	
		1868-69	139	......	139	......	
	Meerut ...	1860-61	55	51	106	48·11	
		1861-62	38	76*	114	66·66	* According to printed report.
		1862-63	46	86†	132	65·15	† According to Collector's and Commissioner's reports.
		1863-64	90	44	134	32·83	
		1864-65	73	50	123	40·65	
		1865-66	67	......	67	......	
		1866-67	29	24	63	38·09	
		1867-68	59	......	59	......	
		1868-69	44	......	44	.. ...	
—concluded.		1860-61	31	26	57	45·78	
		1861-62	30	22	52	42·30	
		1862-63	51	16	67	23·77	

MEERUT,	Boolundshahur ...	1863-64	49	8	57	14·03
		1864-65	49	1	50	2·0
		1865-66	70	4	74	5·40
		1866-67	53	2	55	3·63
		1867-68	49	1	50	2·0
		1868-69	44	1	45	2·22
	Allygurh ...	1860-61	76	1	77	1·29
		1861-62	89	6	95	6·31
		1862-63	26	17	43	37·20
		1863-64	136	3	139	2·15
		1864-65	97	3	100	3·0
		1865-66	103	1	104	0·96
		1866-67	103	......	103	......
		1867-68	81	......	81	......
		1868-69	90	......	90	......
	Total ...	1860-61	415	104	519	20·04
		1861-62	440	120	560	21·42
		1862-63	339	126	465	27·09
		1863-64	483	80	563	14·20
		1864-65	387	55	442	12·44
		1865-66	433	9	442	2·03
		1866-67	389	27	416	6·49
		1867-68	419	8	427	1·87
		1868-69	478	1	479	0·20
KUMAON.	Kumaon ...	1860-61	12	......	12	......
		1861-62	26	......	26	......
		1862-63	20	......	20	......
		1863-64	28	......	28	......
		1864-65	23	8	31	25·80
		1865-66	22	......	22	......
		1866-67	25	8	33	24·24
		1867-68	48	......	48	......
		1868-69	40	......	40	......

1	2	3	4	5	6	7	8
Division.	District.	Year.	Number of proprietary mutations registered by sale and orders of Court.	Number of cases in which the Collector has averted sale under Section 244, Civil Procedure Code.	Total number of cases in which mutation by sale under order of Court was contemplated.	Percentage of cases in which sale has been averted under Section 244.	Remarks.
Kumaon,—*concluded.*	Gurhwal ...	1860-61	2	......	2	......	
		1861-62	2	......	2	......	
		1862-63	4	......	4	......	
		1863-64	7	......	7	......	
		1864-65	6	......	6	...	
		1865-66	6	......	6	......	
		1867-68	10	......	10	......	
		1868-69	6	......	6	......	
	Total	1860-61	14	......	14	......	
		1861-62	28	......	28	......	
		1862-63	24	......	24	......	
		1863-64	35	......	35	......	
		1864-65	29	8	37	21·62	
		1865-66	28	......	28	......	
		1866-67	25	8	33	24·24	
		1867-68	58	......	58	......	
		1868-69	46	......	46	......	
		1860-61	186	2	188	1·06	
		1861-62	132	16	148	10·81	
		1863-64	105	10	115	8·69	
		1864-65	67	3	70	4·28	

ROHILKHUND.	Bijnour	1865-66	59	2	61	3·27	
		1866-67	44	7	51	15·68	
		1867-68	52	2	54	3·70	
		1868-69	126	1	127	0·78	
	Moradabad ...	1860-61	200	48	248	19·35	
		1861-62	80	46	126	36·50	
		1862-63	84	10	94	10·63	
		1863-64	79	9	88	10·22	
		1864-65	75	3	78	3·84	
		1865-66	63	30	93	32·25	
		1866-67	71	2	73	2·73	
		1867-68	100	1	101	0·99	
		1868-69	162	3	165	1·81	
	Budaon	1860-61	357	......	357	......	
		1861-62	226	50	276	18·40	
		1862-63	179	41	220	18·60	
		1863-64	169	42	211	19·90	
		1864-65	118	31	149	20·80	
		1865-66	109	26	135	11·84	
		1866-67	149	21	170	12·35	
		1867-68	101	3	104	2·88	
		1868-69	71	......	71		
	Bareilly	1860-61	68	96	164	58·53	According to Collector's report.
		1861-62	54	80*	134	59·70	*According to printed report.
		1862-63	68	3	71	4·22	
		1863-64	50	64	114	56·14	According to Collector's report.
		1864-65	61	75†	136	55·14	†According to printed report.
		1865-66	71	2	73	2·73	
		1866-67	71	1	72	1·38	
		1867-68	61	......	61		
		1868-69	117	......	117		

1	2	3	4	5	6	7	8
Division.	District.	Year.	Number of proprietary mutations registered by sale and orders of Court.	Number of cases in which the Collector has averted sale under Section 244, Civil Procedure Code.	Total number of cases in which mutation by sale under order of Court was contemplated.	Percentage of cases in which sale has been averted under Section 244.	REMARKS.
ROHILKUND,—*concluded.*	Shahjehanpore ...	1860-61	125	20	145	13·79	
		1861-62	101	55	156	35·25	
		1862-63	21	34*	55	61·81	*According to Collector's report.
		1863-64	52	......	52	......	
		1864-65	61	6	67	8·93	
		1865-66	76	6	82	7·31	
		1866-67	71	3	74	4·05	
		1867-68	88	......	88	......	
		1868-69	98	4	102	3·92	
	Terrai Pergunnahs ...	1860-61—1868-69	Blank.				
	Total ...	1860-61	936	166	1,102	15·06	
		1861-62	593	247	840	29·40	
		1862-63	352	88	440	20·00	
		1863-64	455	125	580	21·55	
		1864-65	382	118	500	23·60	
		1865-66	378	66	444	14·86	
		1866-67	406	34	440	7·72	
		1867-68	402	6	408	1·47	
		1868-69	574	8	582	1·37	
		1860-61	73	......	73	......	
		1861-62	101	64	165	38·79	

AGRA.	Muttra	1862-63	81	......	81	......	
		1863-64	69	......	69	......	
		1864-65	86	21	107	19·62	
		1865-66	52	......	52	......	
		1866-67	72	......	72	......	
		1867-68	82	......	82	......	
		1868-69	84	......	84	......	
	Agra	1861-62	54	66*	120	55	* According to printed report.
		1862-63	90	67	157	42·67	
		1863-64	78	22	100	22·0	
		1864-65	62	16	78	20·51	
		1865-66	66	32	98	32·65	
		1866-67	107	1	108	0·92	
		1867-68	116	......	116	......	
		1868-69	245	......	245	......	
	Furruckabad ...	1860-61	93	220†	313	70·28	† According to Collector's report.
		1861-62	103	109‡	212	51·41	‡ According to printed report.
		1862-63	160	101	261	38·69	
		1863-64	152	118	270	43·70	
		1864-65	107	122§	229	53·27	§ According to Collector's report.
		1865-66	132	65	197	32·99	
		1866-67	131	......	131	......	
		1867-68	150	......	150	......	
		1868-69	146	......	146	......	
	Mynpoory ...	1860-61	44	......	44	......	
		1861-62	49	......	49	......	
		1862-63	77	19	96	19·79	
		1863-64	49	......	49	......	
		1864-65	33	9	42	21·42	
		1865-66	43	14	57	24·57	
		1866-67	22	19	41	46·34	
		1867-68	45	......	45	......	
		1868-69	46	......	46	......	

1	2	3	4	5	6	7	8
Division.	District.	Year.	Number of proprietary mutations registered by sale and orders of Court.	Number of cases in which the Collector has averted sale under Section 244, Civil Procedure Code.	Total number of cases in which mutation by sale under order of Court was contemplated.	Percentage of cases in which sale has been averted under Section 244.	Remarks.
Agra,—*concluded.*	Etawah	1860-61	60	28	88	31·81	* According to Collector's report.
		1861-62	84	26	110	23·63	
		1863-64	24	77*	101	76·23	
		1864-65	31	13	44	29·54	
		1865-66	8	92*	100	92·	
		1866-67	18	......	18	......	
		1867-68	12	5	17	29·41	
		1868-69	27	4	31	12·90	
	Etah	1860-61	148	24	172	13·95	
		1862-63	95	19	114	16·66	
		1863-64	107	13	120	10·83	
		1864-65	87	2	89	2·24	
		1865-66	72	......	72	......	
		1866-67	103	8	111	7·20	
		1867-68	75	13	88	14·77	
		1868-69	72	3	75	4·0	
	Total	1860-61	418	272	690	39·42	
		1861-62	391	265	656	40 39	
		1862-63	503	206	709	29·05	
		1863-64	479	230	709	32·44	
		1864-65	406	183	589	31·06	
		1865-66	373	203	576	35·24	

		1866-67	453	28	481	5·82	
		1867-68	480	18	498	3·60	
		1868-69	620	7	627	1·11	
JHANSIE.	Jaloun	1860-61—1868-69	Blank.				
	Jhansie	1860-61—1868-69	Blank.				
	Lullutpore	1860-61—1868-69	Blank.				
	Total	1860-61—1868-69	Blank.				
ALLAHABAD.	Cawnpore	1860-61	40	......	40	......	
		1861-62	20	......	20	......	
		1862-63	17	......	17	......	
		1863-64	18	......	18	......	
		1864-65	15	......	15	......	
		1866-67	20	......	20	......	
		1867-68	11	......	11	......	
		1868-69	28	......	28	......	
	Futtehpore ...	1861-62	18	4	22	18·18	
		1862-63	13	4	17	23·52	
		1863-64	22	......	22	......	
		1864-65	9	......	9	......	
		1866-67	21	......	21	......	
		1867-68	17	......	17	......	
		1868-69	38	......	38	......	
	Banda	1860-61	19	......	19	......	
		1861-62	12	20*	32	62·50	* According to printed report.
		1862-63	15	3	18	16·66	
		1863-64	10	2	12	16·66	
		1864-65	7	......	7	......	
		1866-67	19	2	21	9·52	
		1867-68	15	1	16	6·25	
		1868-69	24	1	25	4·0	

1	2	3	4	5	6	7	8
Division.	District.	Year.	Number of proprietary mutations registered by sale and orders of Court.	Number of cases in which the Collector has averted sale under Section 244, Civil Procedure Code.	Total number of cases in which mutation by sale under order of Court was contemplated.	Percentage of cases in which sale has been averted under Section 244.	REMARKS.
ALLAHABAD,—*concluded.*	Allahabad ...	1860-61	92	20	112	17·85	
		1861-62	63	7	70	10·0	
		1862-63	69	9	78	11·53	
		1863-64	67	22	89	24·72	
		1864-65	98	......	98	......	
		1865-66	261	1	262	0·38	
		1866-67	129	9	138	6·52	
		1867-68	135	2	137	1·45	
		1868-69	184	......	184	......	
	Humeerpore ...	1860-61	13	4	17	23·52	
		1861-62	14	28	42	66·66	
		1862-63	20	......	20	......	
		1863-64	34	......	34	......	
		1864-65	27	......	27	......	
		1866-67	22	1	23	4·34	
		1867-68	23	......	23	......	
		1868-69	27	2	29	6·89	
	...	1860-61	10	......	10	......	
		1861-62	26	18	44	40·90	
		1863-64	34	11	45	24·44	
		1864-65	29	......	29	......	
		1865-66	57	11	68	17·64	

		1866-67	57	......	57	......
		1867-68	67	......	67	......
		1868-69	13	......	13	......
	Total	1860-61	174	24	198	12·12
		1861-62	153	77	230	33·47
		1862-63	134	16	150	10·66
		1863-64	185	35	220	15·90
		1864-65	185	......	185	......
		1865-66	318	12	330	3·63
		1866-67	268	12	280	4·28
		1867-68	268	3	271	1·10
		1868-69	314	3	317	0·94
BENARES.	Goruckpore ...	1860-61	99	......	99	......
		1862-63	92	......	92	......
		1863-64	76	......	76	......
		1864-65	88	7	95	7·36
		1865-66	73	......	73	......
		1866-67	99	......	99	......
		1867-68	160	......	160	......
		1868-69	114	......	114	......
	Bustee ...	1860-61	Included in Goruckpore.	......	......	......
		1861-62	Do.	......	......	......
		1862-63	Do.	......	......	......
		1863-64	Do.	......	......	......
		1864-65	15	......	15	......
		1865-66	32	......	32	......
		1866-67	47	......	47	......
		1867-68	40	......	40	......
		1868-69	61	......	61	......

1	2	3	4	5	6	7	8
Division.	District.	Year.	Number of proprietary mutations registered by sale and orders of Court.	Number of cases in which the Collector has averted sale under Section 244, Civil Procedure Code.	Total number of cases in which mutation by sale under order of Court was contemplated.	Percentage of cases in which sale has been averted under Section 244.	REMARKS.
BENARES,—*concluded.*	Azimgurh ...	1860-61	68	82	150	54·66	
		1861-62	63	26	89	29·21	
		1863-64	81	97*	178	54·49	* According to Collector's report.
		1864-65	94	75	169	44·31	
		1865-66	61	......	61	......	
		1866-67	100	92	192	47·91	
		1867-68	109	2	111	1·80	
		1868-69	43	......	43	......	
	Mirzapore ...	1860-61	19	8†	27	29·62	† According to Collector's report.
		1861-62	18	4	22	18·18	
		1863-64	8	......	8	......	
		1864-65	10	......	10	......	
		1865-66	12	......	12	......	
		1866-67	13	......	13	......	
		1867-68	20	......	20	......	
		1868-69	18	......	18	......	
	Benares ...	1860-61	13	......	13	......	
		1861-62	20	......	20	......	
		1863-64	11	......	11	......	
		1864-65	9	......	9	......	
		1865-66	13	......	13	......	
		1866-67	22	......	22	......	
		1867-68	4	......	4	......	
		1868-69	12	......	12	......	

	Ghazeepore ...	1860-61	75	......	75	......
		1861-62	67	50	117	42·73
		1863-64	57	......	57	......
		1864-65	91	......	91	......
		1865-66	128	......	128	......
		1866-67	105	......	105	......
		1867-68	89	......	89	......
		1868-69	111	......	111	......
	Total	1860-61	274	90	364	24·72
		1861-62	168	80	248	34·69
		1862-63	92	......	92	......
		1863-64	233	97	330	29·39
		1964-65	307	82	389	21·33
		1865-66	319	......	319	......
		1866-67	386	92	478	17·15
		1867-68	422	2	424	0·47
		1868-69	359	......	359	......
AJMERE.	Ajmere	1860-61—1862-63 Not under North-Western Provinces Government.				
		1864-65—1868-69 Blank.				
	Total	1860-61—1862-63 Blank.				
		1864-65—1868-69 Blank.				
	GRAND TOTAL ...	1860-61	2,231	656	2,887	22·72
		1861-62	1,773	789	2,562	30·79
		1862-63	1,444	436	1,880	23·19
		1863-64	1,870	567	2,437	23·26
		1864-65	1,696	446	2,142	20·82
		1865-66	1,849	290	2,139	13·56
		1866-67	1,927	201	2,128	9·44
		1867-68	2,049	37	2,086	1·77
		1868-69	2,391	19	2.410	0·78

ALLAHABAD;
The 27*th January* 1871.

A. COLVIN,
Secretary, Board of Revenue, N.-W. Provinces.

B.

Extract from the Report of the Sudder Dewanny Adawlut on the Administration of Civil Justice in the North-Western Provinces for the year 1861.

COURT.			Total number of decrees executed or put in execution during the year.	Number of decrees executed, or in process of execution, under Section 243, Act VIII. of 1859.					Number of decrees executed by sale, or in execution, under Section 248.	Number of decrees executed in other manner.	REMARKS.
				By appointment of a manager to charge of property.	By mortgage of the land attached.	By lease of the land attached.	By private sale of a portion of the property.	Total.			
Saharunpore	...	...	8,347	...	1	1	1	3	792	2,892	
Meerut	...	...	4,229	...	6	1	...	7	58	1,723	
Allygurh	...	...	5,820	...	33	...	5	38	575	4,126	
Moradabad	...	...	10,214	...	...	3	4	7	1,131	9,061	
Bareilly	...	...	5,513	4	19	...	9	32	1,009	4,011	
Shahjanpore	...	...	1,650	18	10	...	4	32	852	766	
Agra ...	...	...	7,412	2	14	3	2	21	561	4,943	
Furrekabad	...	...	7,853	1	5	4	3	13	442	6,037	
Mynpoory	...	...	3,673	...	...	...	1	1	204	3,468	
Cawnpore	...	...	1,871	...	1	...	...	1	161	1,709	
Futtehpore	...	...	2,265	3	...	6	1	10	61	1,843	
Allahabad	...	...	4,962	...	...	...	...	...	343	4,619	
Goruckpore	...	...	3,924	69	...	...	1	70	451	1,381	
Azimgurh	...	...	1,451	...	10	3	11	24	56	1,371	
Jounpore	...	...	3,091	...	...	...	1	1	27	1,380	
Mirzapore	...	...	847	...	...	...	...	...	138	714	
Benares	...	...	2,943	4	2	...	10	16	313	1,728	
Ghazeepore	...	...	2,782	27	...	...	...	27	266	3,472	
	TOTAL	...	78,849	128	101	21	53	303	7,440	55,244	

Number.	Zillah.	Number of mouzahs and shares of mouzahs alienated in execution of decrees of Civil Courts during 1862. — Temporary, conditional, partial, or voluntary. — By order of the Court under Section 243.		At instance of the Collector under Section 244.		Total.		Involuntary and permanent under Section 248. — Hereditary.		Other.		Total.		Remarks.
1	2	3		4		5		6		7		8		
		Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	
1	Saharunpore ...	...	24	...	19	...	43	...	340	...	4	...	344	
2	Meerut ...	...	4	...	10	...	14	1	51	...	12	1	63	
3	Allygurh ...	...	...	...	4	...	4	1	162	1	34	2	196	
4	Moradabad ...	1	15	3	1	4	16	5	114	1	16	6	130	
5	Bareilly ...	...	11	2	40	2	51	...	213	...	2	...	215	
6	Shahjehanpore ...	4	74	...	116	4	190	1	90	...	8	1	98	
7	Agra ...	...	17	...	99	...	116	...	93	...	74	...	167	
8	Furruckabad ...	...	11	...	25	...	36	2	154	...	6	2	160	
9	Mynpoory ...	4	1	...	20	4	21	1	52	...	24	1	76	
10	Cawnpore ...	...	1	...	...	...	1	...	8	1	3	1	11	
11	Futtehpore ...	...	4	...	...	...	4	2	48	...	6	2	54	
12	Allahabad ...	...	6	...	...	...	6	...	140	1	7	1	147	
13	Goruckpore ...	...	6	...	...	...	6	...	51	...	6	...	57	
14	Azimgurh ...	...	76	...	31	...	107	5	61	...	11	5	72	
15	Jounpore ...	...	...	9	2	9	2	...	13	...	21	...	34	
16	Mirzapore ...	...	...	...	...	...	...	2	9	1	...	3	9	
17	Benares ...	1	2	...	4	1	6	3	9	...	...	3	9	
18	Ghazeepore ...	4	8	...	4	4	12	...	33	1	55	1	88	
19	Kumaon ...	...	...	...	...	...	...	...	16	...	...	...	16	
	TOTAL ...	14	260	14	375	28	635	23	1,657	6	289	29	1,946	

Extract from the Report of the Sudder Dewanny Adawlut on the Administration of Civil Justice in the North-Western Provinces during the year 1863.

Number.	Zillah.	Number of mouzahs and shares of mouzahs alienated in execution of decrees of Civil Courts during 1863.												Remarks.
		Temporary, conditional, partial, or voluntary.						Involuntary and permanent under Section 248.						
		By order of Courts under Section 243.		At instance of the Collector under Section 244.		Total.		Hereditary.		Other.		Total.		
1	2	3		4		5		6		7		8		
		Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	
1	Saharunpore ...	...	12	...	4	...	16	2	260	...	...	2	260	
2	Meerut ...	...	2	...	5	...	7	1	83	...	...	1	83	
3	Allygurh ...	...	2	...	8	...	10	...	125	...	18	...	143	
4	Moradabad ...	...	4	...	2	...	6	6	198	1	14	7	212	
5	Bareilly ...	...	4	...	23	...	27	...	169	...	21	...	190	
6	Shahjehanpore ...	...	29	...	25	...	54	...	74	...	12	...	86	
7	Agra ...	...	84	...	75	...	159	...	94	...	62	...	156	
8	Furruckabad ...	...	45	...	24	...	69	1	145	...	3	1	148	
9	Mynpoory ...	...	1	...	65	...	66	...	97	...	42	...	139	
10	Cawnpore ...	...	...	...	...	...	...	...	9	1	6	1	15	
11	Futtehpore ...	2	...	...	4	2	4	8	34	1	1	9	35	
12	Allahabad ...	...	...	...	...	...	...	12	162	...	38	12	200	
13	Goruckpore ...	...	21	...	36	...	57	2	118	1	19	3	137	
14	Azimgurh ...	...	...	...	...	...	...	...	46	...	6	...	52	
15	Jounpore ...	...	1	...	7	...	8	...	9	...	9	...	18	
16	Mirzapore ...	...	...	...	...	...	...	...	7	...	...	...	7	
17	Benares ...	...	...	...	...	...	...	...	21	...	5	...	26	
18	Ghazeepore ...	4	21	...	9	4	30	...	45	...	23	...	68	
	Total ...	6	226	...	287	6	513	32	1,696	4	279	36	1,975	

Extract from the Report of the Sudder Dewanny Adawlut on the Administration of Civil Justice in the North-Western Provinces in the year 1864-65. *Operation of Sections* 243 *to* 248, *Act VIII. of* 1859.

		Number of mouzahs and shares of mouzahs alienated in execution of decrees of Civil Courts during 1864.												
		Temporary, conditional, partial, or voluntary.						Involuntary and permanent under Section 248.						
		By order of Courts under Section 243.		At instance of the Collector under Section 244.		Total.		Hereditary.		Other.		Total.		
1	2	3		4		5		6		7		8		
Number.	ZILLAH.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	REMARKS.
1	Saharunpore ...	...	24	...	...	...	24	...	236	...	1	...	237	
2	Meerut ...	...	4	...	5	...	9	...	104	...	...	...	104	
3	Allygurh ...	...	3	...	10	...	13	...	153	...	26	...	179	
4	Moradabad ...	...	2	...	...	...	2	5	122	1	13	6	135	
5	Bareilly ...	...	...	3	89	3	89	...	118	...	17	...	135	
6	Shahjehanpore ...	8	69	...	43	8	112	4	95	...	11	4	106	
7	Agra ...	...	68	...	44	...	112	...	71	...	60	...	131	
8	Furrackabad ...	21	11	...	23	21	34	...	139	...	5	...	144	
9	Mynpoory ...	...	5	...	51	...	56	...	148	..	8	...	156	
10	Cawnpore ...	1	...	...	...	1	...	4	17	...	...	4	17	
11	Futtehpore ...	...	...	...	16	...	16	...	29	2	4	2	33	
12	Allahabad ..	...	...	...	...	...	...	...	125	...	21	...	146	
13	Goruckpore ...	1	75	...	2	1	77	2	98	...	5	2	103	
14	Azimgurh ...	...	81	...	...	...	81	...	60	...	1	...	61	
15	Jounpore ...	...	8	...	8	...	16	6	34	...	1	6	35	
16	Mirzapore ...	...	...	...	...	...	...	...	4	...	...	...	4	
17	Benares ...	...	...	...	...	...	...	...	7	1	3	1	10	
18	Ghazeepore ...	...	10	..	...	...	10	...	41	...	27	...	68	
	TOTAL ...	31	360	3	291	34	650	21	1,601	4	203	25	1,804	

Extract from the Report of the Sudder Dewanny Adawlut on the Administration of Civil Justice in the North-Western Provinces in the year 1865.

		Number of mouzahs and shares of mouzahs alienated in execution of decrees of Civil Courts during 1865.												
		Temporary, conditional, partial, or voluntary.						Involuntary and permanent under Section 248.						
		By order of Courts under Section 243.		At instance of the Collector under Section 244.		Total.		Hereditary.		Other.		Total.		
1	2	3		4		5		6		7		8		
Number.	Zillah.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Remarks.
1	Saharunpore ...	...	5	...	...	...	5	...	199	...	6	...	205	
2	Meerut ...	...	...	...	4	...	4	...	44	...	65	...	109	
3	Allygurh ...	...	1	...	4	...	5	...	118	1	16	1	134	
4	Moradabad ...	...	12	...	7	...	19	6	106	1	9	7	115	
5	Bareilly ...	...	...	...	75	...	75	1	111	...	7	1	118	
6	Shahjehanpore ...	...	...	...	17	...	17	5	109	1	5	6	114	
7	Agra ...	...	7	...	30	...	37	1	50	...	69	1	119	
8	Furruckabad ...	...	4	...	18	...	22	...	108	...	2	...	110	
9	Mynpoory ...	...	7	...	22	...	29	1	102	...	14	1	116	
10	Cawnpore ...	...	...	...	...	...	...	...	5	...	9	...	14	
11	Futtehpore ...	...	1	...	...	...	1	...	20	1	18	1	38	
12	Allahabad ...	...	...	...	...	...	...	5	166	1	33	6	199	
13	Goruckpore ...	10	51	...	24	10	75	1	132	1	6	2	138	
14	Azimgurh ...	...	30	...	8	...	38	...	72	...	8	...	80	
15	Jounpore ...	...	...	1	2	1	2	5	26	2	4	7	30	
16	Mirzapore ...	...	...	...	...	...	...	...	12	1	1	1	13	
17	Benares ...	...	...	...	...	...	...	...	11	1	1	1	12	
18	Ghazeepore ...	...	24	...	...	...	24	...	59	...	38	...	97	
	TOTAL ...	10	142	1	211	11	353	25	1,450	10	311	35	1,761	

Extract from the Report of the High Court of Judicature for the North-Western Provinces on the Administration of Civil Justice during the year 1866.

		Number of mouzahs and shares of mouzahs alienated in execution of decrees of Civil Courts during 1866.												
		Temporary, conditional, partial or voluntary.						Involuntary and permanent under Section 248.						
		By order of Courts under Section 243.		At instance of the Collector under Section 244.		Total.		Hereditary.		Other.		Total.		
1	2	3		4		5		6		7		8		
Number.	Zillah.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Remarks.
1	Saharunpore ...	...	...	...	5	...	5	6	215	...	27	6	242	
2	Meerut ...	...	...	...	18	...	18	...	62	...	35	...	97	
3	Allygurh ...	...	5	...	1	...	6	...	123	...	19	...	142	
4	Moradabad ...	...	2	...	1	...	3	2	122	...	8	2	130	
5	Bareilly ...	...	28	...	89	...	117	5	114	...	13	5	127	
6	Shahjehanpore ...	...	...	...	20	...	20	...	131	...	12	...	143	
7	Agra ...	...	...	...	17	...	17	2	76	...	2	2	78	
8	Furruckabad ...	20	1	...	8	20	9	...	101	...	3	...	104	
9	Mynpoory ...	...	6	...	24	...	30	...	82	...	16	...	98	
10	Cawnpore ...	...	...	...	...	...	...	...	14	...	...	...	14	
11	Futtehpore ...	...	...	...	...	...	...	...	10	...	18	...	28	
12	Allahabad ...	1	51	...	...	1	51	6	252	1	19	7	271	
13	Goruckpore ...	...	...	...	2	...	2	...	184	...	5	...	189	
14	Azimgurh ...	...	152	...	20	...	172	...	44	...	16	...	60	
15	Jounpore ...	...	...	2	3	2	3	...	61	1	15	1	76	
16	Mirzapore ...	...	...	...	...	...	...	...	8	2	3	2	11	
17	Benares ...	...	...	...	...	...	...	1	14	...	...	1	14	
18	Ghazeepore ...	...	8	...	...	1	8	...	66	...	100	...	166	
	Total ...	21	253	2	208	24	461	22	1,679	4	311	26	1,990	

Extract from the Report by the High Court of Judicature, North-Western Provinces, on the Administration of Civil Justice in the North-Western Provinces during the year 1867.

		Number of mouzahs and shares of mouzahs alienated in execution of decrees of Civil Courts during 1867.												
		Temporary, conditional, partial, or voluntary.						Involuntary and permanent under Section 248.						
		By order of Courts under Section 243.		At instance of the Collector under Section 244.		Total.		Hereditary.		Other.		Total.		
1	2	3		4		5		6		7		8		
Number.	ZILLAH.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	REMARKS.
1	Saharunpore ...	...	...	...	...	...	...	...	232	...	21	...	253	
2	Meerut ...	...	...	...	...	...	...	2	94	...	...	2	94	
3	Allygurh ...	...	3	...	6	...	9	...	130	...	16	...	146	
4	Moradabad ...	...	2	...	2	...	4	1	135	2	4	3	139	
5	Bareilly ...	...	5	...	94	...	99	1	117	...	16	1	133	
6	Shahjehanpore ...	...	...	1	11	1	11	...	127	...	5	...	132	
7	Agra ...	...	9	...	4	...	13	...	169	...	13	...	182	
8	Furruckabad ...	...	25	...	9	...	34	...	74	...	6	...	80	
9	Mynpoory ...	...	15	...	24	...	39	1	103	...	26	1	129	
10	Cawnpore ...	...	...	...	...	...	...	...	...	7	7	7	7	
11	Futtehpore ...	...	...	...	1	...	1	...	19	...	33	...	52	
12	Allahabad ...	...	...	...	...	...	...	1	323	...	49	1	372	
13	Goruckpore ...	1	186	3	8	4	*194	1	164	24	52	25	216	
14	Azimgurh ...	2	194	...	23	2	217	...	65	...	24	...	89	
15	Jounpore ...	...	...	...	1	...	1	2	53	...	3	2	56	
16	Mirzapore ...	...	...	...	...	...	...	...	13	...	2	...	15	
17	Benares ...	...	...	...	...	...	...	...	10	2	3	2	13	
18	Ghazeepore ...	2	5	...	5	2	10	...	53	...	39	...	92	
	TOTAL ...	5	444	4	188	9	632	9	1,881	35	319	44	2,200	

* NOTE.—The returns show that 153 shares were permitted to be temporarily alienated by the Principal Sudder Ameen of Bustee. The Judge has, however, subsequently explained that there were in reality only 70 actual shares attached; but as some of them were attached in two or three cases, the number appears as 153. There were altogether only five cases; in four of these there was but one judgment-debtor holding 59 shares, and in the remaining case one judgment-debtor holding 11 shares.

(True Extract.)

A. COLVIN,

Secretary.

No. 502 A, dated Naini Tal, the 9th September 1871.

From—C. A. ELLIOTT, Esq., Offg. Secretary to the Government of the North-Western Provinces.

To—The Secretary to the Government of India, Home Department.

IN continuation of my letter No. 427 A, dated 26th July, I am directed to submit, for the information of His Excellency the Governor General in Council, copy of a report,* with its enclosure, received from the Officiating Registrar of the High Court of Judicature, on the working of Sections 243 and 244 of Act VIII. of 1859.

* No. 1938, dated 23rd August.

2. It will be seen that nearly all the officers consulted by the Court are of opinion that the sections in question are almost inoperative either from the ignorance of the judgment-debtor or from the difficulties in the way of settlement under them. But His Honor the Lieutenant-Governor concurs with the Honourable Judges of the Court and the Board* of Revenue in thinking that the sections do a certain amount of good, and work for the benefit both of creditors and debtors.

* *Vide* letter sent with No. 427A.

3. In illustration of His Honor's views on this subject, and the manner in which he thinks the sections may be most effectively worked, I am to forward an extract (paragraph 26) from the orders (No. 938 A, dated 13th June) on the Board's revenue administration report for 1869-70, in which the pecuniary margin available for paying off judgment-debts is pointed out, and Collectors are urged to take greater advantage of it.

No. 1938, dated Allahabad, the 23rd August 1871.

From—W. TYRRELL, Esq., Offg. Registrar, High Court of Judicature, North-Western Provinces.

To—The Offg. Secretary to the Government of the North-Western Provinces.

WITH reference to your letter in the Judicial (Civil) Department, dated the 31st October 1870, No. 486 A, I am directed to forward the accompanying printed reports of the District Judges and some of the Sub-Judges as to the working of Section 243 and 244 of Act VIII. 1859, with a general statement showing the action taken under the sections named above.

2. In the opinion of the Court the provisions of the law quoted are useful, and their operation, if legally applied, is not such as to injure creditors or debtors.

3. The Courts should not be deprived of the discretionary power hereunder conferred on them of postponing the sale of lands or other immovable property in cases where there is reason to believe that there is a probability of satisfaction of a decree being obtained by mortgage or demise, or partial sale of the property.

Extract, paragraph 26, *from G. O. No.* 938 *A, dated* 13*th June* 1871, *on the Board's Revenue Administration Report for* 1869-70.

26. Paras. 28 to 32.—Only in the Agra and Rohilkhund Divisions have Collectors taken any steps under Section 244, Act VIII. of 1859, to save embarrassed estates from the hands of their creditors. There are many difficulties in the way of making these arrangements; but His Honor trusts that Collectors will not, on that account, neglect the duty imposed upon them. Grave political dangers may sometimes result from transfers which exclude old and influential families from their hereditary possessions; and besides this, there are obvious economic objections to the spectacle of a pauperized gentry continuing to reside as cultivators on the lands of which they once were proprietors. When it is considered that money on loan can hardly be got at twelve per cent., while land habitually sells and is often mortgaged for sums which realise only three or four per cent. on the amount invested, the difference between these two rates of interest supplies a large margin to work on in order to pay off debt. It might be wished that the power of the executive to interfere for this purpose were greater; but, such as it is, the Government looks to the district officers to see that it is properly exercised and not allowed to slumber.

From M. BRODHURST, Esq., *Officiating Judge of Benares,—No.* 355, *dated Benares, the* 24*th December* 1870.

WITH reference to your circular letter No. 13 of 1870, I have the honour to submit the statements therein called for, and which show that, during the three years under notice, there has not been a single instance in which either Section 243 or 244 of Act VIII. of 1859 has been acted upon, and that, under Section 348, three hereditary entire mouzahs and 58 shares of hereditary mouzahs and one other entire mouzah and 10 shares of other mouzahs—total, four entire villages and 68 shares in villages—have during the three years been alienated.

2. I have consulted both the Subordinate Judge and the Moonsiff, as suggested in paragraph 2 of your letter, and I herewith submit translations of their written opinions. In the remarks recorded by the former officer I entirely concur, and consider that they leave me nothing further to say.

Translation of Subordinate Judge's Report.

ENTIRE villages and shares in villages sold at the instance of this Court are but few. In no instances have Sections 243 or 244 been acted upon during the years in question. I think the aforesaid sections are probably useless, and they are seldom, if ever, turned to any account.

From the experience acquired by noticing the steps taken by the parties to cases, it appears that, so long as the amount of debt and also the amount of property are such as to allow of the debt being liquidated without causing a sale of the property, a judgment-debtor never suffers his property to be sold; but when a debt cannot be satisfied out of the

proceeds of the property or by a temporary alienation thereof, or in any other possible way, the debtor then withdraws himself from his estate and is desirous for the interference of the Court. The interference of the Court, however, at this stage is utterly ineffectual, and hardship is palpably done to the judgment-creditor.

Moreover, the action taken under Sections 243 and 244 cannot protect the property from liability to a preferential claim against the same. In such a case, the Court is at a loss as to what should be done; for, if it were by resorting to the arrangements suggested in the above-mentioned sections to suffer a creditor's claim to remain in abeyance against his will, and supposing a better claim were to be set up at the same time, the only result would be that the first creditor would be ruined.

For the above reasons, I am of opinion that the sections in question are not of much practical utility; but after all the Court is willing to carry out their provisions on a fit opportunity offering itself.

Translation of Moonsiff's Report.

SHARES in hereditary estate have been sold only in five cases at the instance of this Court. No debtor, however, applied for arrangements under Sections 243 and 244, but the Court is willing to attend to any such applications.

The provisions of the sections can be most advantageously resorted to where the property yields a large outturn, and promises to discharge the debt by its being temporarily let in farm or held under kham management or attachment, &c. When a debtor is, however, over head and ears in debt, recourse cannot be had to these sections as being likely to throw obstacles in the way of a creditor's satisfying his demand. At all events, I think the sections can well be taken advantage of in the former case. In some instances the operation of these sections also saves the property of debtors who are extravagant and careless.

(True Translations.)

M. BRODHURST,
Officiating Judge.

From W. G. PROBYN, *Esq., Officiating Judge of Meerut,—No.* 2, *dated Meerut, the 2nd December* 1870.

I HAVE the honour to submit herewith the statements called for on the working of Sections 243, 244 and 248, Act VIII. of 1859.

2. It will be observed that during the years under review (1868-69 and first three quarters of 1870) in only four instances was effect given to the provisions of Sections 243 and 244, Act VIII. My experience in this district has been so short that I am unable to account satisfactorily for the state of things, and can only suppose that, unless hopelessly involved, the judgment-debtor is generally able to make some arrangement out of Court with his creditor.

3. Mr. Smith, Sub-Judge, has paid attention to the subject, and I beg to forward herewith a copy of his remarks.

From R. H. Smith, *Esq., Sub-Judge,—No.* 3, *dated Meerut, the* 23*rd December* 1870.

With reference to the circular letter No. 13 of 1870, dated 5th instant, I have the honour to state that this Office possesses no means of discriminating hereditary from non-hereditary property sold in execution of decrees of court; and, so far as my experience goes, no court has in its power to fill up the statement called for from its own records.

The usual rule is for the decree-holder to submit copy of khewut, or record of proprietary right, with his application for sale, and this is forwarded to the Collector with the request that the rights and interests of the judgment-debtor be sold in satisfaction of the decree. The khewut is a mere record of the existence of a proprietary right. In that document there is nothing to show whether that right is hereditary or non-hereditary. This can only be ascertained from the mutation of names caused by the death of the original owner of the property, at whatever period of time that may have occurred. This data does not exist in the records of any civil court. It could only be supplied from the Collector's Office by tracing up to mutation in judgment-debtor's favour, by which only the circumstances under which the mutation was effected could lead to the conclusion of the property being hereditary or otherwise.

I trust to be pardoned for observing that the columns of the statements submitted to the superior authority are filled up at haphazard; as a rule, they would in no way convey actual facts, but tend to create unsound data to build upon.

The columns, so far as I can learn, are filled up by the mohurrir from no data whatever beyond the khewut, which does not enable him to discriminate between the two descriptions of property, and where he has done so it is from no reliable source whatever.

If, on requisition for sale, a Collector was directed to call for a report as to the property being hereditary or otherwise, and inform the court in each case, the difficulty would in future be obviated, and a correct and reliable return could be submitted without difficulty.

In so far as the working of Sections 243 and 244, Act VIII., 1859, is concerned, it will be observed that the columns are blank so far as this Court is concerned; but, to enable the superior court to judge of the operation of the law, I beg to submit a detailed statement showing the actual number of cases for sale of rights and interests in landed property.

During the period in question there were 84 applications, of which only 33 eventuated in sale. The remainder of the decrees (51 in number) were for the most part paid up in full, and a few only in part, and the sales consequently were stayed by compromise. Of those sold there were none in which any reasonable ground existed to believe that the

amount of the judgment could be raised by mortgage, or by letting it on lease, or by disposing by private sale of a portion of the land, which was already unredeemably burdened; for (with the exception of one or two) the sale in each instance realized no more or less than would satisfy the decree.

As a general rule, a creditor who has a lien on property is never very urgent to proceed against landed interests till he finds they are unredeemably in his grasp by the accretion of interest, or for so long as the judgment-debtor can satisfy him with the interest, or as much more as he can squeeze out of his victim under the threat of extreme proceedings.

During the period in question only in one case (in 1868) was a suggestion made by the Collector for the payment of the debt by instalments against the wishes of the decree-holder. This was allowed by the directing officer, but cancelled in appeal on part of the decree-holder. But this mode of settlement can hardly be said to fall within the provisions of Section 244.

No representations were made by the Collector under Section 244, and for the obvious reason that the interests being sold were so hopelessly involved as to render any such measure inadvisable, and as tending only to protract an inevitable and without any advantage to either party.

To sum up, when there exist reasonable grounds to believe that the judgment can be satisfied within a reasonable period without enforcing sale, no landed interests are or ought to be sold; and it is only when property is hopelessly involved that this court has allowed the extreme measure of sale to proceed, and then only after more than one postponement to enable parties to compromise or the judgment-debtor given the opportunity to realize the means to satisfy the debt. On the whole, the power, it will, I trust, be granted, has been used with discretion.

To obtain the correct data from the Collector's office will necessarily be a work of time, and therefore it has been deemed inadvisable to detain the statement, unreliable as it is. The deficit, however, will be supplied by a supplementary form, but at the same time the substantive material supplied by one court only will hardly serve the purpose for which the Government of India may desire the information unless due care is observed in the preparation of these statements furnished by all other courts.

From H. B. Henderson, *Esq., Sessions Judge of Shahjehanpore,—No.* 11, *dated Shahjehanpore, the* 5*th January* 1871.

In reply to the High Court's circular letter No. 13, dated 28th November 1870, I have the honour to submit the accompanying statement showing the operations of Sections 243, 244 and 248, Act VIII. of 1859, for the two years of 1868 and 1869, and the first three quarters

of 1870, in the Judgeship of Shahjehanpore, and also the opinions of the Subordinate Judge and Moonsiffs of Tilhur and Powaine.

2. The statement shows that there have been no alienations by order of any of the courts either in the Shahjehanpore or Budaon Districts under Section 243 for any of the years under report.

3. Also that there have been no alienations at the instance of the Collector under Section 244 for the year 1868, and only 12 in the Shahjehanpore Court for the year 1869, and one for the three quarters of 1870, and none whatever in the Budaon Courts.

4. Under Section 248, only one entire village, hereditary or other, has been sold in the period under report, viz., by order of the Powaine Court; but of hereditary and other shares in villages there have been 585 hereditary shares and 61 others sold, of which the Courts of the Subordinate Judge and of the Moonsiffs of Budaon and Tilhur and Datagunge are accountable for the greatest number.

5. It might be desirable perhaps in future years to add to the statements columns showing the sale prices of the lands thus sold, and the number and amount of the decrees in execution of which the sales took place, and the proportion borne to the number and value of the suits decided.

6. The action taken by the civil courts in this Judgeship under Section 243 has been *nil*, and there has been scarcely any taken by the Collector under Section 244, except, as shown by the Collector of Shahjehanpore, for the year 1869. As the ruling on these sections stands at present, it is difficult to say what can be done by the civil courts, because the power of postponing sales is conferred upon them only at the instance of the judgment-debtor, and then only when he can satisfy the court that the amount can be raised by mortgage or lease.

7. If, as the Moonsiff of Tilhur records, the people are not generally aware of the opportunity afforded them under Section 243, it must be because the legal advisers of judgment-debtors do not take the trouble to explain the provision to their clients and to advise them properly; but it is possible that the number of cases of actual sales is far exceeded by those in which arrangements have been made between decree-holder and judgment-debtor to avert immediate auction sales; and it is possible also that there may be cases in which the decree-holders have exercised influence to prevent judgment-debtors resorting to mortgage and lease and to force on sales.

8. Again, as regards Section 244, Collectors are requested to ascertain by summary enquiry whether the sale of the land or share is objectionable; but he is not competent, *suo motu*, to make the temporary alienation contemplated by the section; for the arrangements to be made in satisfaction of the decree must emanate from the person whose rights are to be sold, and the Collector can only offer his advice and assistance. Until he knows all the particulars of the suit, the circumstances which led to it, how can he offer either judicious advice or

determine whether the sale is really objectionable; and amongst his multifarious duties has he the time to make himself acquainted with all the circumstances of the judgment-debtor whose land he is required to sell and the nature of his transaction with the decree-holder, and to send for him and advise him?

9. In the Government circular No. 1013A, of August 4th, 1860, paragraph 5 says the Collector should ask the judgment-debtor if he can arrange to make the required payment within a reasonable period by instalments, furnishing at the same time adequate security. But, if payment by instalments of which the decree says nothing is to be allowed subsequent to the decree, why should not the court which passed the decree be rendered competent to order payment by instalments in the suit for execution of decree by adding so many words to that effect, both in Sections 243 and 244.

10. Civil courts might be enjoined also to attend more to Section 194 when they pass the decree, and the section itself might be so worded as to ensure proper exercise of the discretionary power allowed.

11. Again, under Section 243 the court might be made competent to postpone a sale whenever it shall be satisfied that the rents, profits or receipts of attached land under a manager appointed can pay off the decree within a reasonable time; and, as in some districts it is not easy to find competent and respectable persons ready to undertake the duties of manager, public curators should be appointed and their circles defined.

12. Also it might be provided in Section 244 that if the Collector shall represent that the public sale of the land or share is objectionable, and that the amount of the decree can be paid off within a reasonable time from the rents, profits or receipts, the court shall be competent to appoint the Collector as manager, or empower him to appoint a manager. Some Collectors are even now, I believe, endeavouring to obtain an extension of the power of the Court of Wards, and to bring estates of debtors who are not otherwise disqualified under the management of the Court.

13. If it is an object to protect land from sale in certain cases, I cannot see why the law should not be so framed as to render the attainment of that object more effectual; and if lands paying revenue to Government were altogether exempted from sale in execution of civil court decrees, the certainty that they could not be thus sold would, I think, be even a relief to money-lenders from the suspense and speculation which a multiplicity of provisions, nicely but somewhat ineffectually framed for the protection of lands in certain cases, must give rise to.

Opinion of MAHOMED HUSSEN KHAN, *Subordinate Judge of Shahjehanpore.*

THE provisions of Section 243 are not carried out by this Court, nor any petition for the same was presented. The Collector, too, did not furnish any report on the operation of Section 244 to enable me to

arrive at any judgment on the matter. But I find from my own experience and the proceedings that when the Collector calls on the Tehseeldar to report whether the property is ancestral or otherwise, &c., the instalments are fixed in certain cases between the decree-holder and the judgment-debtor before the latter officer, and the Collector duly reports the arrangement, which is sanctioned by the Court on agreement between the parties. In some cases the Collectors do not report such arrangements under the terms of Circulars dated November 1859 and August 1860. In the Court the judgment-debtor generally applies for time to comply with the provisions of Section 243, and the plaintiff scarcely objects to such applications. In such cases the property is not released from attachment, but only the sale is postponed for one or two months. In short, these sections are efficacious. Though they are very scarcely resorted to by the debtors, yet the fear of the application of law contained in them induces the decree-holder to volunteer his consent to the instalments and present petitions expressing the same on condition the attachment is not withdrawn.

Opinion of BUSHEER-OOD-DEEN, *Moonsiff of Powaine.*

I AM of opinion that the laws as contemplated in these sections are good, but they are not acted on as they should be, as the Collector never gives effect to the provisions of Section 244 without the consent of the decree-holder, who does not accept the instalments voluntarily. The judgment-debtor very seldom makes such applications in courts under Section 243. I would suggest, for the better carrying out of these sections, that the Collector be empowered to give effect to the provisions of Section 244 without obtaining the consent of the decree-holder, and the sanction of the proposal of the Collector be left to the discretion of the court. If the decree-holder is not satisfied, he may be allowed to appeal against the order. If it is apparent that, by private alienation of a portion of the immovable property, the amount of the decree will be satisfied and the other portion of the same will be saved, and the debtor gives sufficient security, the time required for such arrangement may be allowed. If the property be of the kind producing income, and one-fifth or one-sixth of the annual income is sufficient to cover the amount of the decree with interest, a serbarakar or manager may be appointed to arrange for the payment of the amount of the decree. As, however, the interest (8 annas per cent.) is allowed after the decree, and the decree-holder will be subject to loss if the interest at this rate is allowed, the decree-holder may be allowed interest at 1 per cent. on the instalments, and the arrangement will be suitable both to himself and the judgment-debtor.

Opinion of MOONSHEE GOPAL RAE, *Moonsiff of Tilhur.*

SECTION 243, Act VIII., 1859, empowers the civil courts to make temporary alienations of immovable property on the application of the

judgment-debtor, and Section 244 of the same Act empowers the revenue officers to propose the temporary alienation of the villages paying revenue to Government; and the Government of the North-Western Provinces have under the Act entrusted the revenue officers with the duties of the protection of the property of the judgment-debtors; but it appeared from the working of the above law and orders during the years 1868, 1869 and 1870 that very few endeavours have been made to save the property of the judgment-debtor; and this can be accounted for by the fact that the zemindars are generally ignorant, and very seldom try to save the property by arranging for the satisfaction of the decree. There is no doubt that the framers of the sections of the law cited above had in their view the good of the judgment-debtors, who are wise and frugal, as it is their intention that the property of the judgment-debtors be saved from the risk of auction sale, and the payment of the amount of the decree be arranged by temporary alienations of the said property. Consequently I am of opinion the above-mentioned sections be allowed to stand.

From G. E. LANCE, *Esq., Judge of Cawnpore,—No.* 6, *dated Cawnpore, the* 9*th January* 1871.

As directed in circular No. 13 of November 28th, I have the honour to submit particulars of the working of Sections 243 and 244 of Act VIII. of 1859.

From the annexed statement it will be at once observed that both of these sections have been inoperative.

From the reports that I have received from the sub-judicial authorities it does not appear that any applications have been made to the civil courts by judgment-debtors under Section 243. The Sub-Judge remarks that this section is not applicable to the ordinary cases that come before the courts, meaning thereby that the properties attached are usually of such small value that the appointment of a manager would be out of place. The Sub-Judge also remarks that a manager appointed by the court would most probably not enjoy the trust of either party.

With regard to Section 244, I think it will be shown that the sale of the property is resorted to only when all other means of recovery have failed. Where the amount of decree is small, and where the profits are large, the parties make their own arrangements without the intervention of the revenue courts. Such cases of mortgage come before me every day, either as Registrar or on applications for foreclosure or for release under Act XXXIV. of 1803. It is seldom that the Collector can intervene if he wishes to do so; as, when attachment is made with a view to sale, and in the meantime no means of payment have been devised, the judgment-debtor prefers his property being sold by auction,

where from jealousy of competition it frequently fetches more than its ordinary market rate.

I find that in 1868, out of sixteen cases of attachment by order of the Subordinate Judge, in nine were they withdrawn by applications of the attaching party, in four the amounts of the decrees were paid into court before the day fixed for the sale, and in three cases only were shares actually sold. In 1869 sixteen properties were attached by the same authority. Of these six were withdrawn, and in four the amounts of decree were paid into court, and in six cases property was sold. One of these was an entire village, but the sale was set aside by the High Court for irregularity, and no proceedings have since been taken to enforce it. During the first three quarters of 1870 thirteen shares were notified for sale. In seven cases the amounts of the decrees were paid before sale; in another security was given for the decree and the attachment withdrawn; in four cases property was sold; and in another no sale was effected owing to there being no bids.

Similar results can be shown from all the other courts, and it is thus clear that, where it is possible to avoid sale by private arrangement, it is usually effected.

There can be no doubt that many troubles arise from admitting an entire stranger into the village proprietary, but this can always be prevented by the enforcement of claims to pre-emption.

The Collector will probably be considered the best judge of the expediency of propping up an insolvent pauper proprietor; but as far as my experience extends, I believe that he never recovers himself, but usually sinks deeper and deeper till it is found that a compulsory sale cannot be avoided. It may be delayed, but in the end it is inevitable.

From J. H. Prinsep, *Esq., Offg. Judge of Furruckabad,—No.* 5, *dated Furruckabad, the* 17*th January* 1871.

In compliance with the Court's circular letter No. 13, dated 28th November last, I beg to submit the Notes* of my Sub-Judge, Pundit Juggut Narain, on the working of Sections 243, 244 and 248 of Act VIII. of 1859, and the Collector's reply to my enquiry thereon in connection with the operations of the revenue court in execution of its decrees.

* The Subordinate Judge remarks that no register shewing the proceedings under Sections 243 and 244 of Act VIII. of 1859 being kept in the office, he got the statements filled up from the revenue court. It appeared from the said statements that no proceedings were held under the said sections in this court for the temporary alienation of property, either at its own instance or at the instance of the Collector. The reason was that sales were frequently postponed on the application of the debtors, as also of both the debtors and the creditors, prior as well as subsequent to the issue of the sale proclamations.

But he thinks that, with reference to Section 243, a sale can only be postponed when the judgment-debtor satisfies the court that the judgment-creditor's demand can be satisfied by a temporary alienation of his (debtor's) property.

But when the debt exceeds the value of the property, no one agrees to take the temporary alienation, and for this reason the judgment-debtor does not apply for it to the civil or revenue court. In this respect the Subordinate Judge remarks—

1st.—With reference to Section 194 of the Civil Procedure Code, the Court is competent to fix instalments at time of decree, if sufficient cause be shewn; but if no order for instalments is passed in the decree, the court cannot, without consent of the judgment-creditor, allow time to the judgment-debtor to make arrangements for liquidation of the decree. Sometimes there are cases in which decrees of a date prior to the issue of Act VIII. of 1859, wherein no order for instalments is given, and which are kept alive according to the procedure, are executed by the judgment-creditors at a time when the judgment-debtors are unable to liquidate the same, and properties of larger values, hereditary or acquired, are sold for smaller values. Also, in some decrees passed after the enforcement of Act VIII. of 1859, no instalments have somehow been fixed in the decree itself, but afterwards the judgment-debtor's properties through oversight on their part are alienated, owing to which the execution of decree and liquidation thereof in one lump sum ruins them. It would be more useful to the public if civil courts were vested with the power of fixing instalments in execution of decrees, just as they can do at the time of passing them.

2nd.—If time is allowed to he judgment-debtor to make arrangements for liquidation of the decree after attachment of his property, the attachment is not withdrawn, and in this case no one agrees to have the property transferred to himself. If any one agrees to have it, he enters into provisions which are very injurious to the judgment-debtors. The judgment-creditors often agree to a grace period being allowed to the judgment-debtors, provided the attachment is not removed. In such cases, if transfer of the property attached be held legally good and valid, or the court be allowed to withdraw the attachment on taking security from the judgment-debtor without the judgment-creditor's consent, there would be no difficulty in making the alienations.

3rd.—The zemindars are frequently ignorant and illiterate men, and do not prefer their objections before attachment and sale. It would be more useful if the decree-holders entered in their list of the property filed under Section 213 for attachment of land or other immoveable property, the estimated value and the annual profits of each property. In this case the court would be able to ascertain what portion of the decree could be satisfied by the permanent or temporary alienation of the property. Thus the entire property would not be subject to attachment and sale.

The Collector remarks in the following terms:

"My experience is that the sections are very seldom usefully employed. As a general rule, properties are not sold up until the owners have lost all means of meeting their engagements, and they are therefore unable to offer any terms to the creditors which the latter are inclined to accept. Persons whose properties are about to be sold sometimes apply to me to interfere under Section 244 of the Code of Civil Procedure, but I have seldom found them able to make any reasonable arrangement for the liquidation of their debts."

It will be seen from the statement annexed that the only intervention applied for to save ancestral property from the hammer during the last $2\frac{3}{4}$ years has been in the Court of the Moonsiff of Kunouj and in the Collectorate. The Collector's remarks are to the point, and worthy of consideration. Recourse to Section 244 is only had as the last means when the judgment-debtor is unable to afford any safe guarantee for the payment of the debt adjudged against him. Applications have been made to Collector to stay the sale, but seldom has any reasonable arrangement for the liquidation of the debt been proposed. By the terms of the Government circular No. 1013A, dated 14th August 1860, the Collector is barred from acting *suo motu*, and the arrangement of transfer by lease or mortgage of the debtor's landed property is not so often resorted to as might be expected, for the reasons advanced by the Sub-Judge. If extended powers were given to the court ordering the sale, such as the payment by instalments in execution of decree,

and the taking of security from the judgment-debtor for the fulfilment of his agreement to pay by instalments without the necessity of keeping the estate under attachment, means might be obtained, as suggested by the Sub-Judge, for the rescue of ancestral property from stranger's hands. Decree-holders might also with advantage to the courts be directed to state the estimated value at the market rate and annual profits of property required to be sold, ascertained from the village returns filed in the Collectorate.

As it is, the returns do not shew favourably in the manner expected by Government in their Notification above alluded to. It may be that due attention has not been paid to its provisions, and that the Kunouj Moonsiff is the only one who has brought them to bear on the executions of his decrees. The numbers are nevertheless small.

The only other remark of the Native Judges subordinate to this Court worthy of notice is that of the Moonsiff of Chibramow, who points to the restriction imposed by Section 248 to lands paying revenue to Government. Why should not the provisions of the Government Notification of August 1860 apply to revenue-free or lakhiraj lands as well as to revenue-paying lands? This would appear to be the meaning of the Government Notification; but the Collector's agency as the court of sale does not extend under Section 248 to other lands than those paying revenue to Government.

My own experience enables me to state that judgment-debtors do not avail themselves so freely as Government have contemplated they would of the provisions dictated in their behalf,—one cause being apathy or putting off to the last moment the recourse to the aid of the court in postponing the sale, another cause lying in the difficulty to find other members of the coparcenary ready to advance the requisite sum for which the judgment-debtor's property could be alienated to them as a temporary or permanent measure.

From S. M. MARTIN, *Esq., Offg. Judge, Azimgurh,—No.* 7, *dated Azimgurh, the* 19*th January* 1871.

I HAVE the honour to acknowledge the receipt of your circular letter No. 13 of 1870, and in reply to submit the required statement, filled up after the prescribed form, with the following report.

2. The provisions of Section 243, Act VIII. of 1859, in the interests of both decree-holder and judgment-debtor, seem salutary.

3. With regard to Section 244 of the said Act, I have to inform you that this section is objectionable; it only results in Collectors trying to prop up hopelessly insolvent debtors. Civil courts can do all that is needful without the intervention of Collectors, who have already more work on their hands than they know well how to get through. Not unfrequently, under a misapprehension of the purport of this section, Collectors endeavour to induce civil courts executing decrees to make instalments contrary to the wishes of decree-holders, but this procedure is clearly irregular.

Translation of Opinions of the Subordinate Courts on the working of Sections 243 *and* 244, *Act VIII. of* 1859.

Moulvie Mahomed Abdool Qyoom, Subordinate Judge of Jounpore.— The procedure under Section 244 appertains to the Collector. In the majority of cases in which the Collector represents that a temporary alienation of the estate should be made with a view to the satisfaction of the decree, is accepted, unless any valid reasons to the contrary are found.

In Section 243 two courses are prescribed,—one on the application of the judgment-debtor (which is seldom made), and the other by the court itself (which is of rare occurrence), to appoint a manager to take care of the property. In my opinion, if the estate is capable of paying the amount of decree, the judgment-debtor himself takes steps to pay it therefrom ere he allows the opportunity of its being attached. Often the conditions of the estate and judgment-debtor and amount of decree are such that no beneficial results accrue by any arrangement of the court; and the undue expenses of a capable manager here, to be paid from the estate, thus only delays the repayment of the decree-money, and further encumbers the judgment-debtor. In my experience that estate is auctioned the profits of which by Kham Tehseel or temporary alienation are found to be insufficient. The judgment-debtor himself seeks to pay the decree amount, if it is possible to do so, from the resources of the estate, or by temporary or perpetual transfer, and thus save it from attachment and sale.

Mahomed Taeed Khan, City Moonsiff of Jounpore.—The carrying out of the provisions of Sections 243, 244 and 248, Act VIII. of 1859, depends on the income of the estate which, if capable of paying the amount of decree with interest in a certain number of years, should by all means be carried out. In certain cases the income of the estate is so low that it cannot even pay the interest of the sum due; in such a case it is impossible to carry out the provisions of these sections.

Mooneer-ood-deen Ahmed, Moonsiff of Pergunnah Hovilee, Jounpore.—My opinion is as follows, viz.:

1st.—The one method of carrying out the provisions of Section 243 is on the application of the judgment-debtor. Such applications are seldom made by judgment-debtors. The other method is by the court itself, in which the court appoints a manager in the hope of paying the debt of the decree-holder, and the relief of the judgment-debtor. But the latter alternative is injurious to the judgment-debtor, that is, he has to pay expenses, and thus the settlement of the decree-money is delayed. It often happens that the condition of the judgment-debtor and his estate and the large amount of decree precludes any benefit arising from any arrangements made by the court. The judgment-debtor uses his best endeavours to save the estate from sale, and tries to settle the payment of the amount of decree. In my opinion such estates have only being sold by auction, the profits of which have been

found deficient, and the judgment-debtors have failed to adopt every step to the repayment of the debt.

2nd.—The carrying out of the provisions of Section 244 rests with the Collector, who, when he finds the sale of any estate inadvisable, and the recovery of the debt possible, suggests a temporary alienation of the estate, which is accepted in the majority of instances.

Sabit Ali, Moonsiff of Murreahoo.—For the following reasons it is advisable that the provisions of Section 243 of the Civil Procedure Code be carried out by mortgage or lease of the estate instead of by its auction sale, viz.:

1st.—By auction sale the judgment-debtor is perpetually deprived of his estate.

2nd.—When that estate comes into the hands of a stranger who is not a coparcener in the mehal, various differences arise betwixt him and the ryots of the villages, and they both suffer thereby; whereas the main object of Government is to lessen disputes and prevent its subjects from being sufferers; and this can only be prevented if the judgment-debtor's estate is not put to auction.

By auction sale of the estate only one object is derived, viz., the recovery of the amount of decree; but if it is not sold, the property of the judgment-debtor is preserved, and differences between auction purchaser and the ryots are prevented.

For the above reasons, as a general rule, estates should not be put to auction. It often happens that valuable landed properties are sold for small sums for want of purchasers, and this also gives a loss.

As regards Section 244, my opinion is that it is contrary to circular No. 31, dated 19th November 1859, to fix small instalments when the decree amount is large. In such a case it is far more advisable if one satisfactory promise is taken for its repayment. This would enable the speedy settlement of the decree-money, and save the estate from sale. Unless the judgment-debtor receives a lesson he never feels inclined to settle the decree, and thus it remains unpaid a long while in court.

From H. G. KEENE, *Esq., Officiating Judge of Futtehpore,—No.* 7, *dated Futtehpore, the* 24*th January* 1871.

Letter No. 204, dated 21st instant.

I HAVE the honour to acknowledge your letter noted in the margin, returning the tabular report lately sent to you from this Office for the purpose of a yearly distribution of results, and noticing that I have recorded no opinion on the subject.

In pursuance of these instructions I beg leave to return the statement, altered as desired, and to add as follows:

I was not aware from the tenor of your printed circular that any expression of opinion was required; and so few have been the cases in

which voluntary transfer has been made in execution here, that I have really no means of forming any opinion on special grounds.

But if a general opinion be of any value, I may say that, since the passing of the Procedure Code, I have had considerable experience of the working of these provisions under reference, and that both as Collector and Judge. That they have not worked entirely smoothly may be gathered from the various administrative orders that have had to be issued at different times regarding their application; and I imagine there can be only one reason for this, namely, that the inherent uncertainty of the system gave no complete satisfaction either to decree-holder or to judgment-debtor. The former felt that he was liable to be defeated of his first expectations by the kindly interposition of a Collector anxious to retard the fall of a family. The latter never knew what terms might be ultimately decided upon, or whether it would be more prudent to trust to the imperfectly-understood machinery provided for his protection, or to come to an amicable understanding with his creditor.

In a word, I believe the system to be one of those amicable compromises between two principles that are pregnant with their own condemnation. If it be held desirable that landed property should be, as it is in civilized countries generally, a negotiable security, then it should be left free to follow the laws of ordinary traffic. If, on the other hand, as is, I believe, done in some backward parts of India, it is desired to protect land from such operations, it would be necessary, I imagine, to prevent it from being negotiable at all.

Which of these two methods would be most suitable to the circumstances of these Provinces I am not asked, and I will not hazard a remark; but I hope that I may say this word against a scheme which accepts no principle, and which leaves a subject confessedly of great social, and even political, importance to be the sport of individual and *ex parte* discretion.

From H. LUSHINGTON, *Esq., Judge of Ghazeepore,—No.* 31, *dated Ghazeepore, the* 26*th January* 1871.

I HAVE the honour to acknowledge the receipt of your circular letter No. 13, dated 28th November 1870.

The statement called for accompanies this letter.

From this statement it is very very clear that in the present condition of the Native community its members either will not or know not how to avail themselves of the provident and wise provisions of Sections 243 and 244.

Long before a suit is instituted and a decree obtained the whole of the debtor's property has been irretrievably swallowed up by the creditor's demands. It is the interest of the Native money-lenders that this should be so, and the uneducated, simple Native landholder is no match

for the astute cunning money-lender. Nothing can preserve landed property to the original proprietor when the whole value of it has already been alienated to meet a creditor's demands.

Hence these sections do not at present work, but of course they will do so when education has improved Native society, and when the place of the present illiterate petty zemindar is occupied by a different and improved class of landed proprietors.

From W. J. R. Carnac, *Esq., Judge of Moradabad,—No.* 9, *dated Moradabad, the* 23*rd January* 1871.

In reply to your circular No. 13 of 1870, I have the honour to forward the return called for by paragraph 3 of your letter.

2. It will be seen that the mitigatory clause of the Code referring to temporary alienation of landed estates has been applied in very rare instances only during the past three years.

3. I have for many years expressed an unfavourable opinion of the working of the Sections 243, 244 and 248, on the ground that estates only come to the hammer when the owner has no more credit; and further experience leads me to conclude that any attempt to bolster up an insolvent landowner by temporary expedients of the description indicated by the section under report has the effect of making advances of money more difficult and expensive to the thrifty farmer.

4. The whole of the Native judicial staff of this district has recently been transferred, and I have consulted only the Sub-Judge, a memorandum of whose opinion is forwarded.

Translation of the opinion of the Sub-Judge of Moradabad,—dated the 23*rd December* 1870.

Copy of the Judge's order dated the 5th instant, calling for a statement showing the operation of Sections 243 and 244, Act VIII. of 1859, and an expression of my opinion thereon, duly came to hand. The statement has accordingly been prepared. It shows that no proceedings were taken under those sections during the years 1868-69, and the first three quarters of 1870, apparently because no such estate ever came under attachment by orders of this court as might have excited hopes of a decree being satisfied in full within a reasonable period after defraying the costs of management. It was for this reason, I believe, that the Collector never made such applications under Section 244. The statement shows that three entire villages were sold by auction in 1868, that four villages were sold in 1869, and only one in the first three quarters of 1870.

Judgment-debtors always apply for leave to satisfy the decree by instalments or otherwise when considerable estates are attached; and under the concluding paragraph of Section 243 sales are postponed to

enable the judgment-debtor to raise the amount of decree. If he succeeds in this, sales are not concluded.

The sections above alluded to would operate well only when the estates yield large profits sufficient to meet the cost of management, and at the same time to satisfy the decree in a fixed and reasonable period. But proposals for temporary alienations are, under the provisions of Section 244, left to be made by Collectors at their discretion. It will be highly beneficial if before the occurence of sales the Collectors can ascertain whether the decree can be satisfied in full within a reasonable period by temporary alienation of the attached property. The decree-holders do not like to postpone sales on the small rate of interest allowed them (viz., 8 annas per cent. per mensem), but the said measure might be useful to them by tending to raise the amount of interest payable to them.

From H. VANSITTART, *Esq., Judge of Bareilly,—No.* 13—23 *B, dated Bareilly, the* 3*rd February* 1871.

I REGRET that owing to an oversight there should have been a delay in the submission of this return as called for under your circular letter No. 13, dated the 28th November last.

There was a time when, with reference to Her Majesty's Proclamation and to Earl Canning's Notification, land rose rapidly in value and was becoming a favourable investment for capital by men who might have laid out money on the improvement of it, and certainly would have an interest in the stability of our rule. It at that moment was of consequence to embarrassed proprietors that they should have grace, and the demands of judgment-holders could be met by temporary alienations, which, being in their nature mortgages, were readily accepted by the capitalists. But now a feeling of despondency has come over the more educated people, lenders of money on the land,—the ruinous and regretable enhancement of the revenue settlement, and the legal responsibilities connected with the position of land-owners all running to deter purchasers and to discourage actual holders.

Thus the attachment to the land and desire for the acquisition of it and price of it are declining, and this feeling is, I think, most current among the Mahomedan gentry. I therefore say, let the land be sold, and let no artificial attempt be made to keep the possession of it among the old families who are already impoverished, it being to my mind almost certain that within ten years this Province of Rohilkhund, once so prosperous, may, even with railway communication, be found to have been over-assessed with its attendant troubles, for an increase to the Government rent-roll which may be nominal only when balanced by the loss of remission and of indirect income from other sources, and by actual advances of money from the treasuries in times of distress.

From J. W. SHERER, *Esq.*, C. S. I., *Judge of Allahabad,—No.* 76, *dated Allahabad, the 7th February* 1871.

I HAVE, in reply to your circular letter No. 13, dated 28th November 1870, the honour to forward a tabular statement and two reports in original from my subordinate courts on the working of Sections 243 and 244 of the Civil Procedure Code.

2. It will be seen that for the most part their working amounts to little or nothing. One thing, however, which the Moonsiff remarks is certainly true, viz., that there are many postponements of sales to enable mortgages, &c., to be effected by agreement between the parties. Though these do not appear, they afford the relief contemplated by Section 243.

With regard to the little use made by the Collector of the power of representation referred to in Section 244, I presume the judgment-debtors have been too embarrassed to allow him to hope much benefit would arise from temporary alienation of their estates.

3. The Moonsiff, it will be observed, thinks the working of the sections might be greatly increased if the court might act more *motu suo*. But it seems to me that, if judgment-debtors make so little use of means intended for their relief, powers should be cautiously given to the courts to check the decree-holders in seeking the ordinary means of recovering their claims.

There is great set against the decree-holders, and many of the lower courts would, I think, be disposed to be too lenient to debtors. My own belief is that the real protection the borrowing landholders want is a return to a reasonable legal rate of interest; but as this is rank heresy in these later days, I dare not further dwell on the point.

From A. W. WOLLASTON, *Esq., Subordinate Judge of Allahabad,—No.* 2, *dated Allahabad, the* 28*th January* 1871.

IN compliance with your Persian Roobkary dated 6th December last, forwarding a copy of the High Court's circular letter No. 13, dated 28th November 1870, and directing me to record an opinion on the working of Sections 243 and 244 of Act VIII. of 1859, I have the honour to submit three tabular statements for the three years 1868, 1869 and 1870 (1st quarter) in the form prescribed by the High Court, showing the operation of the above-mentioned sections so far as this court is concerned.

2. The tabular statements show that there were *no temporary* and *voluntary* alienation of villages and shares under Sections 243 or 244 (either by order of court or at the instance of the Collector) during 1868 and the 1st quarter of 1870; but in 1869 there was *one case* of voluntary and temporary alienation of two shares of mouzahs on the

application of the decree-holder in the case noted in the margin. According to his request orders were sent to the Collector to hold the villages Mahomedpore Anytha and Toolsheepore in Kham Tehseel, and to pay the decree-holder yearly the net profits thereof, after paying all expenses. The arrangement holds good to this day, and a large balance is still due on the decree. Owing to the increased jummas assessed on these villages at the recent settlement, there is little hope of the decree being ever fully satisfied.

Debeedeen and others, decree-holders, *versus* Behuskooer, judgment-debtor. Decree, dated 30th October 1868.

The statement shows compulsory alienation or sale of 189 hereditary shares in 1868, and of 204 like shares in 1869. These figures may possibly appear high in comparison with the figures given in returns of other districts, but the monies due on decrees had grown to such large sums that it became imperative to sell the properties outright.

I may add that in the column "By order of Court under Section 354" the figure 354 should be replaced by 243, as 354 relates to other subjects.

From RAM KALI CHOWDRY, *Moonsiff,—dated Allahabad, the* 19*th January* 1871.

WITH reference to the operation of Sections 243 and 244, Act VIII. of 1859, the subject of the letter of the High Court of Judicature, North-Western Provinces, No. 13 of 1870, dated 28th November 1870, to your address, I beg to annex herewith a vernacular statement required under its paragraph 3.

2. It will appear from the statement that there were only two cases in 1868 in which action was taken under Section 244, and neither that section nor the Section 243 was availed of in any other case during the period under report.

3. The provision of Section 243, that gives the advantage of the realization of decrees by the appointment of manager over the attached property of judgment-debtors has not been availed of by this court, because the attached property in no case was of such a large extent as to justify the adoption of the measure in question.

4. As to the temporary alienation of property, provided for by the latter portion of the Section 243, it is to be observed that when a landed proprietor is not much involved, he generally applies, with the consent of the decree-holder, for the postponement of sale, and thereby gains time, within which he raises money by mortgaging his estate or otherwise for the discharge of the decree. This in effect is the operation of the said section. But as applications for such postponement are granted after the expression of consent on the part of decree-holders, they are not formally recognized as cases coming under Section 243. And when it happens that judgment-debtors are in an embarrassed condition, their estates are generally put to public sale. It is to be also

observed that sometimes people do not choose to sell privately a part of their ancestral landed estates for the preservation of the rest, because they have a superstitious notion against such private sales of their hereditary estates.

5. As for the Section 244, the cause why its provisions are not largely availed of appears to be that the involved condition of judgment-debtors generally renders it inexpedient to adopt the course laid down in the section.

6. The object of the two sections being to afford a sort of relief to judgment-debtors by providing for the gradual liquidation of judgment debts against them, and thereby preventing their reduction to the extreme condition of pennilessness, I would suggest, for the more successfully carrying out of such object, that a rule should be introduced making it incumbent on the court to examine *suo motu* in every case in which immovable estates—zemindary property or house property—are attached for sale, the propriety of allowing time to the judgment-debtor to raise money by mortgage, lease or private sale of a part of his property. At present the court cannot take action *suo motu*, because under Section 243 it can only, on the application of the judgment-debtor, postpone the sale for the purpose in question.

7. I would further suggest that the object of affording relief to judgment-debtors would be to a great extent met if a rule were introduced making it competent for the court to order in the Execution Department, on the application of a judgment-debtor, and for any sufficient reason, the payment of the judgment-debt by instalments.

8. I cannot conclude without drawing attention to a sort of oppression generally committed by decree-holders upon judgment-debtors. Pending the attachment of the property of a judgment-debtor, if he sees he would be able to discharge the judgment-debt with means that would come to his hands a month or two later than the date fixed for the sale, he is solicitous for its postponement. But the court cannot of its own authority postpone the sale on such an occasion, for the occasion is not one included in the specific conditions on which it is authorized by law to postpone it. The judgment-debtor consequently entreats the decree-holder to give consent to the postponement, and the latter takes unfair advantage of the pressure against the former, by extorting from him a sum as a present or a debt bond, without substantial consideration or otherwise, before giving consent to the postponement. To remove this evil, which acts oppressively on judgment-debtors, it is highly necessary to empower the court to postpone sales whenever it sees sufficient reasons for doing so.

From J. ALONE, *Esq., Officiating Judge of Small Cause Court,—No. 5, dated the* 9*th January* 1871.

As requested in your docket No. 417, dated 10th ultimo, I have the honour to submit a statement of the operation of Sections 243, 244 and 248, Act VIII., 1859, and the first three quarters of 1870.

2. The provisions of Section 243, which refer to houses and patches of land, as well as to land not on the rent-roll, are, as a rule, not acted on, for it is very seldom that such property is sufficiently valuable or extensive to warrant the appointment of a manager, or to afford a prospect of the decree being realized within a reasonable time by mortgage or lease; and it not unfrequently happens that there are several decrees out against the same property, and that no satisfactory arrangement for meeting them all can be devised. On this point I would beg leave to transcribe the remarks of the Madras High Court *in re* Rednum Atchuta Ramaiya *versus* Khaja Mahomed Ameen Khan, *alias* Dada Sahib and another, dated 25th March 1870:—"It is clear that it never could have been intended by the provisions of Section 243 to give the civil courts for an indefinite length of time the management of the encumbered estates of the country, or to compel decree-holders *to submit to unreasonable delay before they can receive satisfaction of their decrees.* It is further extremely doubtful whether Section 243 was intended to be applied to the case of more than a single decree-holder, or whether the court has any authority to compel a prior attaching decree-holder to admit those subsequently attaching the estate to rateably with him in the net income of the estate".

3. In addition to this it may be observed that the courts are so fully occupied as to have no time to look after the management of such properties and audit the accounts.

4. In regard to Section 248, its provisions are in this district practically inoperative. The initiative lies with the judgment-debtor and Collector, but it is seldom that a satisfactory arrangement can be effected. On this subject it will not be out of place to quote the remarks made by the Collector of Agra, as given in the revenue administration report for 1867-68: "Whatever opinion we may hold as to the policy of trying to avert sales of hereditary property in execution of decrees of court, my experience at Banda and Agra has been and is that this section of the Code of Civil Procedure is practically inoperative. The Tehseeldar is told to intimate to the judgment-debtor the way in which the sale of his property can be averted; but in nine cases out of ten it comes out that the property is so encumbered that its *temporary transfer*, without which, in opposition to the wish of the decree-holder, sale cannot be staved off, is impracticable. The judgment-debtor tries to gain time by offering to pay the decree by instalments, tendering only his personal security; but his offer generally involves the extension of the instalments over too long a period to satisfy the creditor; and of course when the matter is referred for orders to the civil court, he objects to the arrangement, and sale follows". The Collector of Muttra, too, observed that "the circular order, which insists on peremptory sale on the day fixed, renders the Collector a mere cypher as a mediator between plaintiff and defendant, and makes him next to useless in averting sales of land".

5. Formerly it appears that at the instance of the Collector sanction was sometimes accorded by the courts to the liquidation of decrees

The reason is, I think, and as I am informed by the Subordinate Judge and Moonsiff of Mynpoory, that the properties advertized for sale consist chiefly of fractional shares of inconsiderable amount, and inadequate for the realization of the decree debt by temporary alienation. The entire number also of executions by sale is not large, and it will be seen that the cases of sale of entire mouzahs are very infrequent indeed. Parties also are in the habit of coming to terms for the payment of the decree by instalments, and without any temporary alienation.

From R. M. EDWARDS, *Esq., Offg. Commissioner, Jhansie Division,—No.* 79 *B, dated Camp Labehut, the* 22*nd February* 1871.

I HAVE the honour to submit the report called for by your No. 13, dated 28th November 1870, on the working of Sections 243 and 244, Act VIII. of 1859.

2. I have to apologize for the delay in its submission. The requisition was received before I joined the division, and it was only a few days ago that I learnt that the papers had not been despatched.

3. The officers who have been consulted on the subject are—

Mr. G. Lang, C. S., Deputy Commissioner of Jhansie.

,, J. V. Sturt, Assistant Commissioner of Jhansie.

Colonel J. Davidson, Deputy Commissioner of Jaloun.

,, A. G. Davidson, Deputy Commissioner of Lullutpore.

I submit copies of their several replies.

4. The Court will observe but very little action has been taken under these sections in this division.

5. Alienation of land in satisfaction of debt is unknown under Native Governments; and in these districts, which have comparatively lately passed under British rule, the old customs to a great extent still prevail.

6. In Lullutpore there was only one instance under Section 243, and in it the attachment was so speedily withdrawn at the instance of the decree-holder that it may be said to have been cancelled *ab initio*. No measures under Section 244 were resorted to.

7. In Jaloun there were only five cases under Section 243 during the period specified, and here again we find Section 244 a dead letter.

8. The return of Jhansie, on the other hand, shows that the provisions of Section 243 have never yet been made use of, while there were several temporary alienations under Section 244. This is the only district in the division in which sales of land in execution of decrees have been carried out, and there have been nine cases during the first three quarters of 1870. I am not yet in a position to explain the cause of such contradictory practice in adjoining districts.

9. Previous to Act XVIII. of 1869 sales of land in execution of civil court decrees could not take place without the previous sanction of the Commissioner; and the general belief that such a rule remained in force subsequent to the above enactment has probably been the chief reason why sales have been so little resorted to by decree-holders.

10. In this part of the country such sales should be discouraged as far as equity will admit; but as the law now stands they cannot, in my opinion, be stayed or carried out on the mere *fiat* of the Commissioner.

11. Act XVIII. made the procedure identical in this and the Regulation Provinces.

12. Mr. Sturt's argument that the interference of Government under Section 244 in the interests of the debtor is called for, because the Government by its revenue demand has been the cause of the landholder's being involved; in other words, that the debt is the necessary result of our revenue system, merits no notice. He is, however, correct in saying that the public sale of land in Jhansie is an innovation. It has been unknown until quite lately—and it is in every way undesirable—that estates should fall into the hands of the Marwaree bankers, who, as remarked by him, are bad landlords, and whose rack-renting propensities will soon ruin the best and most flourishing villages.

13. As the Civil Judges inthis division are also revenue officers, they are in the best possible position to ascertain the real circumstances of the judgment-debtor, and if Section 243 or 244 should be brought into play. In other parts of the country I have, as a rule, found the decree-holder amenable, and ready to enter into any arrangement which the Collector recommended. When he does object it is with good reason, and generally because of an illegal arrangement which is sometimes resorted to, by which, though action has been nominally taken under Section 244, the alienation provided for by that section does not take place, possession being left with the debtor, subject to certain annual instalments towards liquidation of the debt.

14. Although the action taken under Sections 243 and 244 in this division has been so trifling as to afford no data on which to base an opinion, my experience in other districts of these Provinces has enabled me to judge of their fitness, and I would recommend their retention in the Code. Many an old family property has been saved from the hammer by a judicious use of Section 244, while the interests of the decree-holder have not suffered in any way, and the previous Section (243) has also often proved beneficial.

From G. L. Lang, *Esq., Deputy Commissioner of Jhansie,—No.* 30, *dated Camp Kotra, the* 9*th February* 1871.

I have the honour to reply to your No. 32, dated 6th December 1870, and submit the return therein called for.

2. Of the Assistants employed in this district during the years 1868, 1869 and 1870, Messrs. James and Sturt I consider best qualified to judge of the working of the Sections 243 and 244, Act VIII. of 1859.

3. Mr. James has been transferred to Oraie, and has doubtless been called upon by the Deputy Commissioner of that District for an expression of his opinion.

4. Mr. Sturt's report I herewith submit. He is strongly in favour of the interference of the district officer. He looks upon the sale of village (in this district at any rate) as the result of revenue policy; and holds that the Marwaree and other bankers who, having lent money for payment of Government demand for seed grain and food, run up their accounts at exorbitant compound interest in a few years to twice and three times the amount of the original loan, should not be able to count on the ready assistance of our courts to enforce the sale of land—a practice alien to the custom of the country under Native rule. Mr. Sturt further holds that the Marwaree is a bad landlord; that instead of spending his money on the village, he rack-rents the cultivators, and will leave the estate at the close of the present settlement in a worse condition than he found it.

5. To proceed to my own experience of the working of the sections in question. In this district postponement of sale has not had the effect of inducing the judgment-debtor to negotiate a private sale, lease or mortgage; and the reason of this is that sales of land have been so rare that the people do not believe in any actual necessity of taking steps to avert them.

6. In this division (in common with other Non-Regulation Districts) sale could only be enforced after much delay by the express sanction of the Commissioner, and indeed there is hardly a case of sale on record. This absence of sales does not prove that the zemindars have managed to liquidate their debts; on the contrary, the debts have run on, further sums have been borrowed, and bonds and deeds of mortgage have been executed; the debtor has only got more hopelessly involved.

7. After the transfer of jurisdiction to the High Court, our civil courts commenced to sell land in execution of decree, and some few sales were effected, but not until the heaviest pressure of the famine (which half ruined this district) was removed. Mr. Ricketts, doubting their legality, stayed further proceedings until the issue of definite orders. This restriction has now been removed, and sales will proceed as usual. No sales are, however, effected until the courts have fully satisfied themselves there is no other way of liquidating the debt.

8. In this division the Civil Judges exercise revenue functions, and in their revenue capacity can ascertain all they care to know about the circumstances of the shareholder and his share. In submitting their requisitions for sale under Section 248, they are instructed to report all particulars of the case. On receipt of the said requisition and report, I call for further information from the revenue office (if necessary) before I allow the sale to proceed.

9. Thus you will observe that no sales are effected until the revenue officers have thoroughly satisfied themselves that sale is not only advisable, but necessary.

10. I am of opinion that this amount of interference on behalf of the revenue authorities is very advisable. Sales are no longer practically prohibited, and will increase in number year by year (for our execution files are heavy), but shares will not be lightly or needlessly sold, and as judgment-debtors realize that their creditors can force on the sale of land, they will no doubt exert themselves to save (by private alienation) their estates from coming to the hammer.

SECTION 248, Act VIII. of 1859, provides for sale of property in execution of decrees; and by Section 244, when such property consists of land or a share in land paying revenue to Government, the Collector as a revenue officer is authorized to interfere to prevent sale, if by any other means the decree can be satisfied.

In the Non-Regulation Provinces, however, by a special order sale of land for the satisfaction of decrees is prohibited except with the sanction of Government, which the Commissioner of the Division represents.

The sale of land or share are of rare exceptional occurrence. Only during the last year (1870) it seems that Section 248 has been acted on; but out of 33 cases sale actually took place in only 16, the rest were arranged for under Section 244.

In my opinion the provisions of Section 244 are most desirable where sale of land is allowed to protect the interest of the ignorant landholders. Speaking for this district, I may add that justice as well as policy demand Government interference to ward off such sale.

On grounds of justice—

Balance.—In the first place it will be found that most of existing debts of the proprietors have been incurred for the payment of balances; and as Government are in a way instrumental in getting them into debt, it is but fair that it should protect them from its evil consequences. Secondly, sale of land is an innovation, and sanctioned only under our rule. In ordinary cases the measure is hard, but its enforcement under the circumstances of enforced debt is particularly grievous, and is felt to be so. Lastly, the usual rate of interest (24 per cent.) and the system of compound interest charged may be allowable where there is actual risk to the lender; but when the estate becomes liable for the debt, such terms are unfair and against equity.

On grounds of policy—

It is apparent that the measure tends to replace rapidly the present class of proprietors for that of Marwarees and other mahajuns, none of which classes possess any influence with the people of the country, nor have any agricultural knowledge to improve the estate. They hold the estate only with the object of profit, and this policy they carry out to extremes without regard to the welfare of the estate or of its cultivators, thus barring improvement and weakening the lands of

Government. It is a serious question how far this alteration in the class of proprietors should be allowed.

Should it be the wish of Government to bring Section 248 into unrestricted operation in this district before the permanent settlement, I trust it will be done after a general notice to the people fixing a time, and only debts incurred subsequent to which may come under its operation.

The return shows not a single case under Section 243, and indeed such cases must be exceptional in the district.

J. T. STURT,
Assistant Commissioner.

From Lieutenant-Colonel J. DAVIDSON, *Deputy Commissioner, Jaloun,— No. 9, dated Oraie, the* 16*th January* 1871.

IN reply to your circular No. 32, dated 12th ultimo, forwarding a copy of the High Court's circular letter No. 13, dated 28th November 1870, regarding the working of Sections 243 and 244, Act VIII. of 1859, I have the honour to report as follows.

2. It will be seen from the accompanying statement that there have been no cases under Sections 244 and 248, and only five under Section 243 during 1868-69 and the three first quarters of 1870.

3. As regards Sections 244 and 248, there have hitherto been no cases whatever in this district of sale of landed property in execution of decree. As regards Section 243, applications are occasionally received for the temporary alienation of mouzahs or shares of mouzahs, and this has been carried out when the judgment-debtor could make no other arrangement for satisfying the demand of the decree-holder.

4. The power given to the courts under Section 243 seems specially beneficial where the debtor is so circumstanced that he has no movable property available, or if, as sometimes happens, he does all in his power to evade the decree-holder's demands. In the one case it is, with the exception of the extreme measure of sale, the only means of protecting the decree-holder's rights; and in the other it would, specially where the property is hereditary, act as the strongest inducement to the judgment-debtor to effect some acceptable compromise.

5. I have known cases elsewhere in this division where landholders have themselves come forward and applied for temporary alienation and rateable distribution of the assets amongst the decree-holders, but no cases have come to my knowledge where valuable estates have thus been attached, as the proprietors in the great majority of such cases would be in a position to make other arrangements for payment.

From A. G. DAVIDSON, *Esq., Deputy Commissioner of Lullutpore,— No.* 18, *dated the* 17*th January* 1871.

IN reply to Commissioner's circular No. 32, dated 6th December 1870, the undersigned has the honour to forward statement as called for

on the working of Sections 243 and 244, Act VIII. of 1859. It will be seen that in only one case (in the whole period included in the return) has action under the above sections taken place, and even within a period of three years no other case of action under the above sections took place.

The majority of all cases tried in the civil courts of this district are for very small amounts, and these chiefly on book and bond debts; this is the reason why so little recourse is had to Sections 243, 244 and 248 of the Civil Code.

There appears never to have been a sale under Section 248 of the Act in question.

From W. G. PROBYN, *Esq., Judge of Meerut,—No.* 88, *dated the* 22*nd February* 1871.

IN continuation of this Office letter No. 2, dated the 2nd ultimo, forwarding certain statements on the working of Sections 243, 244 and 248, called for by the Court, with copy of a report from the Subordinate Judge, has the honour to forward a fresh statement submitted by that officer, with copy of his covering letter.

From R. H. SMITH, *Esq., Subordinate Judge of Meerut,—No.* 27, *dated Meerut, the* 21*st February* 1871.

WITH reference to my letter No. 3, dated 23rd December last, I have the honour to submit the "Statement showing the Proceedings held under Sections 243, 244 and 248, Act VIII., 1859", as called for by the circular letter of the High Court No. 13, dated 5th idem. The delay has arisen from the necessity of getting the particulars required to fill up the statement correctly from the Offices of the Collectors of Meerut and Boolundshuhur.

APPENDIX TO THE REPLIES FROM JUDGES.

Operation of Sections 243, 244 *and* 248, *Act VIII. of* 1859, *in the Zillah Courts of the North-Western Provinces, during the years* 1868-69 *and first three quarters of* 1870.

District.	Civil Courts.	Number of mouzahs and shares of mouzahs alienated in execution of decrees of Civil Courts during the years.												REMARKS.
		Temporary, conditional, partial, or voluntary.						Involuntary and permanent under Section 248.						
		By order of Court under Section 243.		At instance of the Collector under Section 244.		Total.		Hereditary.		Other.		Total.		
		Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Judge .. .. 1868 ...	...	...	...	...	...	...	...	...	...	..	...	...	
	1869 ...	...	...	...	...	...	...	...	1	...	...	..	1	
	1870 ...	...	...	...	...	...	...	...	...	...	...	...	...	

MIRZAPORE ...	Subordinate Judge ...	1868 ...	...	...	...	...	...	...	...	...	...	16	...	16
		1869 ...	...	...	...	...	...	...	...	...	1	6	1	6
		1870 ...	...	...	...	...	...	...	...	...	1	10	1	10
	Moonsiff	1868 ...	...	...	...	...	...	...	...	...	...	5	...	5
		1869 ...	...	...	...	...	...	...	...	1	...	2	...	3
		1870 ...	...	...	...	...	...	...	...	...	...	2	...	2
	Total ...		...	...	...	...	...	...	...	2	2	41	2	43
CAWNPORE ...	Judge	1868 ...	...	...	...	...	...	...	...	...	...	...	...	...
		1869 ...	...	...	...	...	...	...	...	1	...	...	...	1
		1870 ...	...	...	...	...	...	...	...	...	...	...	...	...
	Subordinate Judge ...	1868 ...	...	...	...	...	...	...	...	1	...	2	...	3
		1869 ...	...	...	...	...	...	...	1	5	...	...	1	5
		1870 ...	...	...	...	...	...	...	...	4	...	...	...	4
	1st Grade Moonsiff, Cawnpore ...	1868 ...	...	...	...	...	...	...	...	5	...	...	...	5
		1869 ..	...	...	...	...	...	...	...	3	...	...	...	3
		1870 ...	...	...	...	...	...	...	...	...	...	...	...	...
	3rd Grade Moonsiff, Cawnpore ..	1868 ...	...	...	...	...	...	...	...	3	...	...	...	3
		1869 ...	...	...	...	.	...	...	...	5	...	...	...	5
		1870 ...	...	...	.	...	...	...	...	8	...	...	..	8
	Moonsiff of Akberpore ...	1868 ...	...	..	...	...	...	...	...	8	...	1	...	9
		1869 ...	...	...	..	...	...	...	...	13	...	2	...	15
		1870 ...	...	...	...	...	...	...	...	3	...	3	...	6
	Ditto of Humeerpore ...	1868 ...	...	...	...	...	...	...	...	9	...	1	..	10
		1869 ...	...	...	...	...	...	...	...	24	...	4	...	28
		1870 ...	...	...	...	...	...	...	...	30	1	5	1	35
	Total ...		...	...	...	...	...	...	1	122	1	18	2	140
MEERUT ...	Judge ...	1868 ...	...	...	...	...	...	...	...	...	...	...	...	...
		1869 ...	...	...	...	...	...	...	...	...	..	...	...	...
		1870 ...	...	...	...	...	...	...	...	...	...	...	...	...
	Subordinate Judge ...	1868 ...	...	...	...	...	...	...	...	16	...	...	...	16
		1869 ...	...	...	...	...	...	...	...	7	...	2	...	9
		1870 ...	...	...	...	...	...	...	...	7	...	1	...	8

District.	Civil Courts.		Number of mouzahs and shares of mouzahs alienated in execution of decrees of Civil Courts during the years.												REMARKS.
			Temporary, conditional, partial, or voluntary.						Involuntary and permanent under Section 248.						
			By order of Court under Section 243.		At instance of the Collector under Section 244.		Total.		Heredi-tary.		Other.		Total.		
			Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	
1	2		3	4	5	6	7	8	9	10	11	12	13	14	15
MEERUT,—*concluded.*	Moonsiff of Meerut ...	1868 ...	...	...	...	...	...	...	...	4	...	...	...	4	
		1869 ...	...	...	...	...	...	...	...	29	...	...	...	29	
		1870 ...	...	...	...	...	...	...	...	28	...	...	...	28	
	Ditto of Ghazeeabad ...	1868 ..	...	2	...	2	...	4	...	11	...	2	...	13	
		1869 ...	...	...	..	...	.	...	...	19	...	2	...	21	
		1870 ...	...	...	...	...	...	...	...	16	...	3	...	19	
	Ditto of Boolundshuhur ...	1868 ...	...	...	...	...	...	...	...	30	...	2	...	32	
		1869 ...	...	...	...	...	...	...	...	30	...	1	...	31	
		1870 ...	...	...	...	...	...	...	...	21	...	...	...	21	
	Total ...		...	2	...	2	...	4	...	219	...	13	...	231	

SHAHJEHANPORE.	Shahjehanpore.	Subordinate Judge ...	1868 ...	...	...	...	...	...	...	...	40	..	6	...	46
			1869 ...	...	...	...	5	...	5	...	26	...	2	...	28
			1870 ...	...	...	...	...	...	...	...	21	...	3	...	24
		Moonsiff of Shahjehanpore ...	1868 ...	...	..	...	...	...	...	...	17	...	1	...	18
			1869 ...	...	...	...	2	...	2	...	17	...	...	...	17
			1870	...	...	...	...	...	...	...	12	...	1	..	13
		Ditto of Tilhur ...	1868 ...	...	...	...	...	...	...	...	19	...	2	...	21
			1869 ...	...	...	...	5	...	5	...	60	...	3	...	63
			1870 ...	...	...	...	1	...	1	...	43	...	3	...	46
		Ditto of Powaine ...	1868 ...	...	...	...	...	...	...	...	6	...	...	..	6
			1869 ...	...	...	...	...	...	...	1	7	...	1	1	8
			1870 ...	...	...	...	...	...	...	...	10	...	1	...	11
		Total ...		...	...	...	13	...	13	1	278	...	23	1	301
	Budaon.	Subordinate Judge ...	1868 ...	...	...	...	...	...	...	...	3	...	...	...	3
			1869 ...	...	...	...	...	...	...	...	3	...	4	...	7
			1870 ...	...	...	...	...	...	...	...	2	...	...	...	2
		Moonsiff of East Budaon ...	1868 ...	...	...	...	...	...	...	...	23	...	7	...	30
			1869 ...	...	...	...	...	...	...	...	16	...	3	...	19
			1870 ...	...	...	...	...	...	...	...	23	...	...	...	23
		Ditto West ditto ...	1868 ...	...	...	...	...	...	...	...	36	...	3	...	39
			1869 ...	...	...	...	...	...	...	...	26	...	3	...	29
			1870 ...	...	...	...	...	...	...	...	15	...	3	...	18
		Ditto of Datagunj ...	1868 ...	...	...	...	...	...	...	...	51	...	7	...	58
			1869 ...	...	...	...	...	...	...	...	55	...	6	...	61
			1870 ...	...	...	...	...	...	...	...	54	...	2	...	56
		Total ...		...	...	...	...	...	...	...	307	...	38	...	345
		Grand Total ...		...	...	...	13	...	13	1	585	...	61	1	646
JOUNPORE ...		Judge ...	1868 ...	...	...	...	...	...	...	...	...	...	...	...	...
			1869 ...	...	...	...	...	...	...	...	...	...	...	...	...
			1870 ...	...	...	...	...	...	...	...	...	...	...	...	...
		Subordinate Judge ...	1868 ...	...	...	...	...	...	...	...	43	...	4	...	47
			1869 ...	...	...	...	...	...	...	...	25	...	2	...	27
			1870 ...	...	...	...	...	...	...	...	11	...	6	...	17

District.	Civil Courts.		Number of mouzahs and shares of mouzahs alienated in execution of decrees of Civil Courts during the years.												REMARKS.
			Temporary, conditional, partial, or voluntary.						Involuntary and permanent under Section 248.						
			By order of Court under Section 243.		At instance of the Collector under Section 244.		Total.		Hereditary.		Other.		Total.		
			Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	
1	2		3	4	5	6	7	8	9	10	11	12	13	14	15
JOUNPORE,—*concluded.*	Moonsiff of City ...	1868 ...	...	...	...	1	...	1	...	2	...	4	..	6	
		1869 ...	...	...	...	1	...	1	...	5	...	5	...	10	
		1870 ...	...	...	...	...	...	...	...	6	..	5	...	11	
	Ditto of Pergunnah ...	1868 ...	...	...	...	...	...	...	...	3	...	2	...	5	
		1869 ...	...	...	...	4	...	4	...	13	...	6	...	19	
		1870 ...	...	...	...	...	...	...	...	10	...	1	...	11	
	Ditto of Murriahoo ...	1868 ...	...	...	...	...	...	...	...	7	...	...	...	7	
		1869 ...	...	...	...	...	...	...	...	8	...	...	...	8	
		1870 ...	...	...	...	...	...	...	...	4	...	...	...	4	
		Total ...	...	...	...	6	...	6	...	137	...	35	...	172	

BENARES ...	*Judge* ...	1868 ...	...	...	...	...	...	...	...	...	...	...	...	...
		1869 ...	...	...	...	...	...	...	...	1	...	...	...	1
		1870 ...	...	...	...	...	...	...	...	3	1	...	1	3
	Subordinate Judge ...	1868 ...	...	...	...	...	..	...	...	5	...	...	...	5
		1869 ...	...	...	...	...	...	...	1	24	...	1	1	25
		1870 ...	...	...	...	...	...	...	2	20	...	8	2	28
	Moonsiff ...	1868 ...	...	...	...	...	...	...	...	...	...	...	...	...
		1869 ...	..	...	...	...	...	...	...	...	..	...	...	...
		1870 ...	...	...	...	...	...	...	...	5	...	1	...	6
	Total ...		...	...	...	...	...	...	3	58	1	10	4	68
FURRUCKABAD ...	Judge ...	1868 ...	...	...	...	...	...	...	...	1	...	..	...	1
		1869 ...	...	...	...	...	...	...	...	...	...	..	...	...
		1870 ...	...	...	...	...	...	...	...	6	...	...	...	6
	Subordinate Judge ...	1868 ...	...	...	...	...	...	...	...	30	...	2	...	32
		1869 ...	...	...	...	...	...		2	7	...	...	2	7
		1870 ...	...	...	...	...	...	...	...	13	...	...	...	13
	Moonsiff of Kunouj ...	1868 ...	...	...	...	3	...	3	...	12	...	...	...	12
		1869 ...	...	...	...	4	...	4	...	13	...	...	...	13
		1870 ...	...	...	...	2	...	2	...	7	...	...	..	7
	Ditto of Chubramow ...	1868 ...	...	...	...	...	..	...	...	17	...	...	...	17
		1869 ...	...	...	...	...	...	...	...	11	...	...	...	11
		1870 ...	...	...	...	...	...	...	..	6	...	...	...	6
	Ditto of Northern Division ...	1868 ...	..	...	...	...	...	...	...	9	...	...	...	9
		1869 ...	...	...	...	1	..	1	...	13	...	...	...	13
		1870 ...	...	...	...	1	...	1	...	7	...	...	...	7
	Ditto of Southern Division ...	1868 ...	...	...	...	...	...	...	...	9	...	1	...	10
		1869 ...	...	...	...	...	...	...	...	23	...	1	...	24
		1870 ...	...	...	...	...	...	...	...	14	...	...	...	14
	Collector ...	1868 ...	...	...	...	...	...	...	...	...	...	...	...	...
		1869 ...	...	...	...	...	...	...	...	...	...	...	...	...
		1870 ...	...	...	...	1	...	1	...	...	...	...	...	...
	Total ...		...	...	...	12	...	12	2	198	...	4	2	202

District.	Civil Courts.	Year	Number of mouzahs and shares of mouzahs alienated in execution of decrees of Civil Courts during the years.												REMARKS.
			Temporary, conditional, partial, or voluntary.						Involuntary and permanent under Section 248.						
			By order of Court under Section 243.		At instance of the Collector under Section 244.		Total.		Hereditary.		Other.		Total.		
			Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	
1	2		3	4	5	6	7	8	9	10	11	12	13	14	15
AZIMGURH ...	Judge ...	1868 ...	...	...	...	...	...	...	...	4	...	...	...	4	
		1869 ...	...	...	...	...	...	...	1	17	...	6	1	23	
		1870 ...	...	...	...	...	...	...	...	33	...	7	...	40	
	Subordinate Judge ...	1868 ...	...	...	...	...	...	...	...	41	...	18	...	59	
		1869 ...	4	1	...	...	4	1	1	49	...	9	1	58	
		1870 ...	...	...	...	...	...	...	...	16	...	1	...	17	
	Moonsiff of City ...	1868 ...	...	...	...	1	...	1	...	14	...	31	...	45	
		1869 ...	...	...	...	...	...	...	...	11	...	33	...	44	
		1870 ...	...	...	...	...	..	...	...	9	...	11	...	20	
	Ditto of Mohamedabad ...	1868 ..	...	...	...	...	...	...	...	7	...	3	...	10	
		1869 ...	...	...	...	...	...	...	...	25	...	10	...	35	
		1870 ...	...	...	...	...	...	...	...	17	...	5	...	22	

	Ditto of Nugra ...	1868 ...	...	...	...	...	...	...	...	31	...	1	...	32
		1869 ...	...	...	...	...	...	...	...	50	...	4	...	54
		1870 ..	...	...	...	...	...	...	...	21	...	9	...	30
	Total ...		4	1	...	1	4	2	2	345	...	148	2	493
FUTTEHPORE ...	Judge ...	1868 ...	...	...	...	...	...	...	...	1	...	1	...	2
		1869 ...	...	...	...	...	...	...	1	...	1	...	2	...
		1870 ...	...	...	...	...	...	...	...	...	1	...	1	...
	Subordinate Judge ...	1868 ...	...	...	1	7	1	7	...	15	...	3	...	18
		1869 ...	...	...	...	2	...	2	...	32	...	1	..	33
		1870 ...	..	...	...	1	...	1	...	29	...	34	...	63
	Moonsiff of Banda ...	1868 ...	...	...	...	...	...	...	...	10	...	1	...	11
		1869 ...	...	...	...	...	...	...	...	15	...	1	...	16
		1870 ...	...	...	...	...	...	...	...	15	...	1	...	16
	Ditto of Tirohan ...	1868 ...	...	...	...	...	...	...	...	3	...	...	...	3
		1869 ...	...	...	...	...	..	..	...	3	...	1	..	4
		1870 ...	...	...	...	...	...	...	...	3	...	...	...	3
	Total ...		...	...	1	10	1	10	1	126	2	43	3	169
GHAZEEPORE ..	Subordinate Judge ...	1868 ...	...	...	...	2	...	2	...	11	.	2	...	13
		1869 ...	...	...	...	1	...	1	...	8	1	3	1	11
		1870 ...	...	...	...	...	...	...	...	19	4	7	4	26
	Moonsiff of Ghazeepore ...	1868 ...	...	...	...	...	...	...	...	14	...	10	...	24
		1869 ...	...	...	...	...	...	...	.	12	...	2	...	14
		1870 ...	...	...	...	...	..	...	...	7	...	1	...	8
	Ditto of Bulliah ...	1868 ...	...	1	...	...	...	1	...	12	...	...	..	12
		1869 ...	...	3	...	...	...	3	...	15	...	..	..	15
		1870 ...	...	2	...	...	..	2	...	7	...	...	...	7
	Ditto of Mohamedabad ...	1868 ...	...	...	...	...	...	...	...	22	...	...	...	22
		1869 ...	...	...	...	...	...	...	1	29	...	...	1	29
		1870 ...	...	...	...	...	...	...	...	25	...	...	...	25
	Ditto of Russah ...	1868 ...	...	...	...	...	...	..	...	14	...	...	...	14
		1869 ...	...	...	...	...	...	...	..	19	...	...	...	19
		1870 ...	...	...	...	...	...	...	...	27	...	...	...	27

District.	Civil Courts.	Year	Number of mouzahs and shares of mouzahs alienated in execution of decrees of Civil Courts during the years.												Remarks.
			Temporary, conditional, partial, or voluntary.						Involuntary and permanent under Section 248.						
			By order of Court under Section 243.		At instance of the Collector under Section 244.		Total.		Hereditary.		Other.		Total.		
			Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	
1	2		3	4	5	6	7	8	9	10	11	12	13	14	15
Ghazeepore,—*concluded.*	Moonsiff of Sydepore ...	1868 ...	...	...	...	...	...	...	...	8	...	...	...	8	
		1869 ...	...	...	...	...	...	...	...	4	...	...	...	4	
		1870 ...	...	...	...	...	...	...	...	10	...	...	...	10	
	Total ...		...	6	...	3	...	9	1	263	5	25	6	288	
	Subordinate Judge ...	1868 ...	...	...	...	...	...	...	3	62	...	4	3	66	
		1869 ...	...	...	...	...	...	...	3	70	1	5	4	75	
		1870 ...	...	...	...	...	...	...	...	27	1	...	1	27	
	Moonsiff of City Moradabad ...	1868 ...	...	...	...	...	...	...	...	...	...	...	...	...	
		1869 ..	...	...	...	...	...	...	...	...	...	...	...	...	
		1870 ...	...	...	...	...	...	...	...	...	...	...	...	...	

MORADABAD ...	Ditto of Bijnour ...	1868 ...	...	...	...	...	...	...	...	29	...	...	...	29
		1869 ...	...	...	...	...	...	..	3	43	...	1	3	44
		1870 ...	...	...	...	...	...	..	...	27	...	...	...	27
	Ditto of Nugeena ..	1868 ...	...	...	...	...	...	...	...	22	...	...	...	22
		1869 ...	...	...	...	...	...	...	...	25	...	1	...	26
		1870 ...	...	...	...	...	...	...	...	7	...	..	..	7
	Ditto of Amroha ...	1868 ...	...	...	...	2	...	2	...	33	...	...	...	33
		1869 ...	...	...	...	3	...	3	...	33	...	1	...	34
		1870 ...	...	2	...	...	...	2	...	15	...	...	...	15
	Ditto of environs, Moradabad...	1868 ...	...	...	...	1	..	1	...	...	...	...	...	...
		1869 ...	...	4	...	4	...	8	...	45	...	10	...	55
		1870 ...	...	1	...	4	...	5	...	6	...	1	...	7
	Ditto of Billaree ...	1868 ...	...	...	...	2	..	2	...	11	...	...	...	11
		1869 ...	...	...	...	1	...	1	..	19	...	...	...	19
		1870 ...	...	...	...	1	...	1	...	6	..	...	...	6
	Ditto of Sumbhul ...	1868 ...	...	...	...	...	..	...	...	12	...	...	...	12
		1869 ...	...	...	...	..	...	...	...	40	..	3	...	43
		1870 ...	...	...	...	...	...	...	...	23	...	2	...	25
	Total ...		...	7	...	18	...	25	9	555	2	28	11	583
ALLAHABAD ...	Subordinate Judge ...	1868 ...	...	...	...	...	...	...	...	189	...	35	...	224
		1869 ...	...	2	...	...	...	2	...	204	...	66	...	270
		1870 ...	...	...	...	...	...	..	...	76	1	20	1	96
	Moonsiff of Allahabad ...	1868 ...	...	...	...	2	...	2	...	45	...	24	...	69
		1869 ...	...	...	...	...	...	...	...	250	...	11	...	261
		1870 ...	...	...	...	...	...	...	...	143	...	15	...	158
	Total ...		...	2	...	2	...	4	...	907	1	171	1	1,078
BAREILLY ...	Judge ...	1868 ...	...	...	..	...	...	...	...	...	...	...	...	...
		1869 ...	...	...	..	...	...	...	...	1	...	...	...	1
		1870 ...	...	...	...	...	...	...	...	...	...	1	...	1
	Subordinate Judge ...	1868 ...	...	...	...	3	...	3	...	23	...	7	...	30
		1869 ...	...	...	...	3	...	3	...	22	..	4	...	26
		1870 ...	...	4	...	...	...	4	...	24	...	3	...	27

District.	Civil Courts.		Number of mouzahs and shares of mouzahs alienated in execution of decrees of Civil Courts during the years.												Remarks.
			Temporary, conditional, partial, or voluntary.						Involuntary and permanent under Section 248.						
			By order of Court under Section 243.		At instance of the Collector under Section 244.		Total.		Hereditary.		Other.		Total.		
			Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	
1	2		3	4	5	6	7	8	9	10	11	12	13	14	15
BAREILLY,—*concluded.*	Moonsiff of Bareilly ...	1868 ...	...	...	...	5	...	5	...	23	...	6	...	29	
		1869 ...	...	...	...	...	...	.	...	4	...	1	...	5	
		1870 ...	...	...	...	...	...	...	...	1	...	...	...	1	
	Ditto of Pillibheet ...	1868 ...	...	...	...	1	...	1	...	6	...	2	...	8	
		1869 ...	...	...	...	1	...	1	...	1	...	1	...	2	
		1870 ...	...	...	...	...	...	...	...	1	...	...	...	1	
	Ditto of Suburbs, Bareilly ...	1868 ...	...	...	...	2	...	2	...	25	...	3	...	28	
		1869 ...	...	...	...	3	...	3	...	49	...	1	...	50	
		1870 ...	...	...	...	2	...	2	...	28	...	3	...	31	
	Ditto of Beesulpore ...	1868 ...	...	...	...	6	...	6	...	7	...	2	...	9	
		1869 ...	...	...	...	12	...	12	...	28	...	3	...	31	
		1870 ...	...	...	...	1	...	1	...	13	...	5	...	18	

	Ditto of Bissowlie	1868	...	...	...	...	...	...	...	34	...	6	...	40
		1869	...	...	...	...	..	...	...	26	...	6	...	32
		1870	...	...	...	...	...	...	...	35	...	11	...	46
	Ditto of Suheswan	1868	...	...	...	...	...	...	...	44	...	14	...	58
		1869	...	...	...	...	...	...	...	41	...	2	...	43
		1870	...	...	...	...	...	..	...	23	...	4	...	27
	Total		...	4	...	39	...	43	...	459	...	85	...	544
AGRA	Subordinate Judge's Court	1868	...	...	...	...	...	...	...	6	...	31	..	37
		1869	...	...	...	...	...	...	1	10	...	19	1	29
		1870	...	...	...	...	...	...	...	13	...	11	...	24
	Moonsiff's Court	1868	...	1	...	...	...	1	...	183	...	8	...	191
		1869	...	...	..	1	...	1	...	178	1	47	1	225
		1870	...	...	...	...	...	...	...	47	...	11	...	58
	Total		...	1	...	1	...	2	1	437	1	127	2	564
ALLYGURH	Subordinate Judge	1868	...	...	...	1	...	1	...	25	1	23	1	48
		1869	...	...	...	1	..	1	...	20	...	...	..	20
		1870	...	...	...	.	...	...	24	37	...	2	24	39
	Sudder Ameen	1868	...	...	...	1	...	1	...	21	...	3	...	24
		1869	...	...	...	...	..	...	...	...	...	...	...	...
		1870	...	...	...	...	...	..	...	...	...	...	...	...
	Moonsiff of Coel	1868	..	...	...	...	...	...	.	10	...	1	...	11
		1869	...	...	...	...	.	...	...	18	...	...	...	18
		1870	...	...	...	...	..	...	...	7	...	...	...	7
	Ditto of Hatrass	1868	...	...	...	...	...	...	...	5	.	2	..	7
		1869	...	...	...	...	...	...	...	10	...	...	...	10
		1870	...	..	...	...	...	...	2	8	...	1	2	9
	Ditto of Akrabad	1868	...	...	...	...	...	...	.	9	...	...	...	9
		1869	...	...	...	...	...	...	...	16	...	...	...	16
		1870	...	...	...	...	...	..	..	11	...	...	...	11
	Ditto of Khyr	1868	...	...	...	...	...	...	...	11	...	...	...	11
		1869	...	...	...	...	...	...	..	20	...	...	...	20
		1870	...	...	...	...	...	...	...	15	...	...	...	15

District.	Civil Courts.		Number of mouzahs and shares of mouzahs alienated in execution of decrees of Civil Courts during the years.												REMARKS.
			Temporary, conditional, partial, or voluntary.						Involuntary and permanent under Section 248.						
			By order of Court under Section 243.		At instance of the Collector under Section 244.		Total.		Hereditary.		Other.		Total.		
			Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	
1	2		3	4	5	6	7	8	9	10	11	12	13	14	15
ALLYGURH,—*concluded.*	Moonsiff of Kasgunge ...	1868 ...	...	...	...	1	...	1	...	18	...	6	...	24	
		1869 ...	...	...	...	1	...	1	...	21	...	3	...	24	
		1870 ...	...	...	...	...	...	...	...	18	...	5*	...	23	
	Total ...		...	...	...	5		5	26	300	1	46	27	346	
	Moonsiff of Dehra Doon ...	1868 ...	...	...	...	...	...	...	...	1	...	...	...	1	
		1869 ...	...	...	...	...	...	...	...	...	...	...	...	...	
		1870 ...	...	...	...	...	...	...	...	2	...	...	...	2	
	Ditto of Shamlee ...	1868 ...	...	...	...	...	...	...	...	35	...	3	...	38	
		1869 ...	...	...	...	...	...	...	...	74	...	5	...	79	
		1870 ...	...	...	...	...	...	...	...	56	...	4	...	60	

SAHARUNPORE ...	Ditto of Deobund ...	1868 ...	...	...	...	...	...	...	...	72	...	...	...	72
		1869 ...	...	...	...	...	...	...	1	74	...	...	1	74
		1870 ...	...	...	...	...	...	...	...	46	...	...	...	46
	Ditto of Moozuffernugger ...	1868 ...	...	...	...	...	...	...	...	39	...	6	...	45
		1869 ...	...	...	...	...	...	...	...	45	...	4	...	49
		1870 ...	...	...	...	...	...	...	...	57	.	7	...	64
	Ditto of Saharunpore ...	1868 ...	...	..	...	..	...	...	...	74	...	...	...	74
		1869 ...	...	...	...	...	...	...	...	80	...	...	...	80
		1870 ...	...	...	...	...	...	...	...	51	...	...	...	51
	Subordinate Judge, Saharunpore	1868 ...	...	...	...	...	...	...	...	30	...	3	...	33
		1869 ...	...	...	...	...		..	...	31	...	1	...	32
		1870 ..	...	...	...	...	...	...	..	17	...	1	...	18
	Ditto of Dehra Doon ...	1868 ...	...	...	...	...	...	...	...	...	...	...	...	...
		1869 ...	...	...	...	...	...	...	...	1	...	..	...	1
		1870 ...	...	...	...	...	...	...	...	1	...	...	...	1
	Judge of Saharunpore ...	1868 ..	...	...	...	...	...	...	...	2	...	...	...	2
		1869 ...	...	...	...	...	...	...	...	...	...	...	...	...
		1870 ...	...	...	...	...	...	...	...	...	...	...	...	...
	Total ...		...	...	...	...	...		1	788	...	34	1	822
MYNPOORIE ...	Judge's Court	1868 ...	...	...	...	...	...	...	...	...	...	...	...	...
		1869 ...	...	...	...	...	...	...	...	...	...	...	...	...
		1870 ...	...	...	...	...	...	...	...	...	...	...	...	...
	Subordinate Judge's Court ...	1868 ...	...	...	...	1	...	1	...	13	...	3	...	16
		1869 ...	...	...	...	1	...	1	...	12	...	5	...	17
		1870 ...	...	9	3	...	3	9	2	10	...	2	2	12
	Moonsiff of Etawah ...	1868 ...	...	...	...	...		...	...	9	1	3	1	12
		1869 ..	...	...	...	...	...	...	...	12	...	10	...	22
		1870 ...	...	...	...	...	.	...	...	8	...	5	...	13
	Ditto of Etah ...	1868 ...	...	...	...	...	...	...	...	37	...	2	...	39
		1869 ...	...	...	...	...	...	...	...	38	...	5	...	43
		1870 ...	...	...	...	...	...	...	...	18	...	5	...	23
	Ditto of Mynpoorie ...	1868 ...	...	...	...	2	...	2	...	21	...	3	...	24
		1869 ...	...	...	...	3	...	3	...	15	...	...	...	15
		1870 ...	...	...	...	...	...	...	...	12	...	...	...	12

District.	Civil Courts.		Number of mouzahs and shares of mouzahs alienated in execution of decrees of Civil Courts during the years.												REMARKS.
			Temporary, conditional, partial or voluntary.						Involuntary and permanent under Section 248.						
			By order of Court under Section 243.		At instance of the Collector under Section 244.		Total.		Hereditary.		Other.		Total.		
			Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	
1	2		3	4	5	6	7	8	9	10	11	12	13	14	15
MYNPOORIE,—*concluded.*	Moonsiff of Shekoabad	1868 ...	...	...	...	1	...	1	...	10	...	...	...	10	
		1869 ...	...	...	...	1	...	1	...	22	...	1	...	23	
		1870 ...	...	...	...	1	...	1	...	11	...	...	...	11	
		Total ...	...	9	3	10	3	19	2	248	1	44	3	292	
	Judge	1868 ...	...	...	...	...	...	...	...	3	3	4	3	7	
		1869 ...	...	...	...	...	...	...	...	...	...	...	...	...	
		1870 ...	...	...	...	...	...	...	...	1	...	...	...	1	
	Sub-Judge	1868 ...	1	24	...	...	1	24	...	33	...	23	...	56	
		1869 ...	...	1	...	...	...	1	...	27	14	...	14	27	
		1870 ...	...	42	...	...	...	42	...	14	...	...	...	14	

GORUCKPORE	*Goruckpore.* — *First Grade Moonsiff*	1868	...	1	...	...	...	1	...	91	...	10	...	101
		1869	...	1	...	...	...	1	...	25	...	...	...	25
		1870	...	...	...	...	...	...	...	14	...	3	...	17
	Moonsiff of Bunsgaon	1868	...	...	...	...	...	...	...	30	...		...	30
		1869	...	...	...	...	...	...	...	37	...	...	...	37
		1870	...	...	...	...	...	...	...	9	...	...	...	9
	Ditto of Deoria	1868	...	...	...	...	...	...	...	34	...	...	...	34
		1869	...	...	...	...	...	...	...	39	...	...	...	39
		1870	...	...	...	...	...	...	...	32	...	...	...	32
	Total	...	1	69	...	...	1	69	...	389	17	40	17	429
	Bustee. — Judge	1868	...	...	...	...	...	...	...	...	1	...	1	...
		1869	...	...	...	...	...	...	...	...	...	...	...	...
		1870	...	...	...	...	...	...	...	...	...	...	...	...
	Sub-Judge	1868	...	...	...	...	...	...	...	8	...	4	...	12
		1869	...	...	...	...	...	...	...	8	...	...	...	8
		1870	...	...	...	...	...	...	...	15	...	2	...	17
	Moonsiff of Bustee	1868	...	...	...	...	...	...	...	40	...	...	...	40
		1869	...	...	...	...	...	...	...	29	2	...	2	29
		1870	...	...	...	...	...	...	...	9	...	...	...	9
	Ditto of Bansee	1868	...	...	...	...	...	...	...	5	...	1	...	6
		1669	...	...	...	...	...	...	...	13	...	...	...	13
		1870	...	...	...	...	...	...	...	12	...	1	...	13
	Ditto of Bunsgaon	1868	...	...	...	...	...	...	...	...	...	...	...	...
		1869	...	...	...	...	...	...	...	...	...	...	...	...
		1870	...	...	...	...	...	...	...	4	...	...	...	4
	Total	...	...	...	...	...	...	...	...	143	3	8	3	151
	Grand Total	...	1	69	...	...	1	69	...	532	20	48	20	580
JHANSIE	Jhansie	1868	...	...	1	1	1	1	...	...	...	...	...	...
		1869	...	...	...	...	...	...	...	...	...	...	...	...
		1870	...	...	...	12	...	12	...	10	...	...	...	10

District.	Civil Courts.		Number of mouzahs and shares of mouzahs alienated in execution of decrees of Civil Courts during the years.												REMARKS.
			Temporary, conditional, partial, or voluntary.						Involuntary and permanent under Section 248.						
			By order of Court under Section 243.		At instance of the Collector, under Section 244.		Total.		Heredi-tary.		Other.		Total.		
			Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	Entire mouzahs.	Shares of mouzahs.	
1	2		3	4	5	6	7	8	9	10	11	12	13	14	15
JHANSIE,—*concluded.*	Jaloun ...	1868 ...	...	...	...	...	...	...	...	...	...	...	...	...	
		1869 ...	1	2	...	...	1	2	...	...	...	...	...	...	
		1870 ...	1	1	...	...	1	1	...	...	...	...	...	...	
	Lullutpore ...	1868 ...	...	...	...	...	...	...	...	...	...	...	...	...	
		1869 ...	...	...	...	...	...	...	...	...	...	...	...	...	
		1870 ...	1	...	...	...	1	...	...	...	...	.	...	...	
	Total ...		3	3	1	13	4	16	...	10	...	...	...	10	

No. 37, dated Hyderabad, the 16th February 1871.

From—Major W. TWEEDIE, First Assistant Resident, Hyderabad.

To—The Secretary to the Government of India, Home Dept.

THE Resident has now the honour to furnish the report called for by your letter No. 1721, dated 22nd September 1870, in regard to the practical effect of the working of Sections 243 and 244 of the Civil Procedure Code so far as the sale of land in execution of decrees of civil courts is concerned.

Letter No. 2518, dated 19th November 1870, from Commissioner, East Berar.
Letter No. 333, dated 4th February 1871, from Commissioner, West Berar.

2. Mr. Saunders regrets the delay that has occurred in submitting this report, but the statistical data called for from the Berar officers were not received in this Office until the 7th instant. Copies of letters from the Commissioners of East and West Berar, with their accompaniments, are herewith enclosed.

3. From the correspondence attached, it will be observed that the statistics supplied from the two divisions of Berar relate to different periods, namely, in the case of East Berar to 10 months of 1870 and in that of West Berar to the whole of 1869 and the three quarters of 1870. This has to be noted in drawing conclusions from the data in question.

4. Some of the points deducible from the provincial figures may be noted as follows.

5. Of the two sections on the working of which a report has been called for, Mr. Saunders would observe that Section 243, Civil Procedure Code, so far as it relates to the appointment of a manager, does not appear to have found favour in the Assigned Districts, and he concurs with the two Divisional Commissioners in thinking that, in a Province like Berar, where, under the ryotwaree system, the whole of the land is divided into a large number of petty holdings, the appointment of a manager would be at best a questionable measure, when regarded from the judgment-debtor's point of view, since the latter can ill afford to bear any extra item of expenditure which may be thrown upon his land.

6. At the same time, although the provision just alluded to is thus practically inoperative in the Assigned Districts, yet, in consideration of the large jagheers and enam tenures which are scattered over Berar, it may be said, even with regard to the Assigned Districts, that the provision in question is not without its special value and applicability.

7. In regard to the working of Section 244, Civil Procedure Code, it may be remarked that out of 253 cases in which attachments of land were made

87, or 34 per cent., were disposed of by temporary alienation of land;

121, or 47 per cent., were satisfied out of court by the judgment-debtors, when they found that their land was being alienated.

in 26 (or 10 per cent.) the land was sold;

in 19 cases the termination is uncertain, although the Berar officers report that 'sale was recommended'.

8. It will thus be seen that the power to stave off the sale vested in the courts has done much good: the sales have been reduced to a minimum, viz., 10 per cent., and the settlements out of court have considerably exceeded the proportion of cases adjusted by temporary alienation. While, therefore, the result, as evidenced by the figures just quoted, is in accordance with the prevailing opinion of the Judges in Berar that land should not be sold in satisfaction of debt except as a *dernier resort*, Mr. Saunders is generally of opinion that a rule of law which has served alike to secure the interests of Government as well as of landowners should be left undisturbed.

No. 2518, dated Woomrawuttee, the 19th November 1870.

From—Lieutenant-Colonel W. NEMBHARD, Commissioner, East Berar.

To—The First Assistant Resident, Hyderabad.

I HAVE the honour to acknowledge your letter No. 3536, dated 8th ultimo, forwarding copy of Government letter No. 1721, dated 22nd September last, calling for a report on the working of Sections 243 and 244 of the Civil Procedure Code relative to the sales of land under decrees of the civil courts.

2. In reply, I beg to state, for the Resident's information, that in the Woon District there have not yet been any sales of land in execution of decrees.

3. The Woomrawuttee Deputy Commissioner reports that there have been three instances, in neither of which was a manager appointed, nor was any temporary alienation effected under Section 244; the judgment-debtors' rights were sold without reserve in liquidation of the judgment-debt.

4. In the Ellichpore District there have been five cases as follows, all under Section 244:

	Remarks.
Mouzah Sindgaon, fields Nos. 10, 13 and 16, attached for debt of Rs. 158-8.	The judgment-debtor's right to cultivate field No. 10 for five years, and No. 16 for six years, were sold, respectively, for Rs. 77-8 and Rs. 72, total Rs. 149-8, and the amount was paid to the judgment-creditor. The right No. 13 was not sold.

Mouzah Kurrusgaon, fields Nos. 92 and 106, attached for debt of Rs. 344-9-9.	The judgment-debtor's right to cultivate these fields for 25 years was sold for Rs. 200, and the amount was paid to the judgment-creditor.
Mouza Kakurda, field No. 97, debt Rs. 79-5-9.	The judgment-debtor's right to cultivate this field for five years was sold for Rs. 65, and the amount realized paid to the judgment-creditor.
Mouzah Kowruta, field No. 138, debt Rs. 208-6-6.	None of the auction bidders would take this field for a longer period than one year. The judgment-debtor's right to cultivate it for one year was sold for Rs. 20, and this amount was paid to the judgment-creditor.
Mouzah Kandlee, fields Nos. 88 and 127, debt Rs. 821-15-6.	The judgment-debtor's right to cultivate these fields for one year was sold for Rs. 106, and the amount paid to the judgment-creditor.

5. The Resident will observe that, except in the case of Mouzah Kurrusgaon, the alienations have been for comparatively short periods. In two out of the five cases the alienation is only for a twelvemonth.

No. 333, dated Akola, the 4th February 1871.

From—The Commissioner, West Berar.

To—The First Assistant Resident, Hyderabad.

I HAVE the honour to submit to the Resident the report called for through your letters,* marginally cited, on the working of Sections 243 and 244 of the Civil Procedure Code. I send up letters† from the Deputy Commissioners of Akola and Booldana (the Assistant Commissioner, Bassim, writes only that no sales of land have taken place in his district), with the details collected from districts grouped in a tabular form. A report‡ from Mr. Srikristna Narhar, Extra Assistant Commissioner, is also appended, as it may be taken to illustrate very fairly the general view of Native Judges upon the matter.

* No. 3537, dated 8th October 1870.
No. 750, dated 18th November 1870.

† Akola No. 481, dated 27th January 1871.
Booldana No. 3043, dated 30th December 1870.

‡ No. 65, dated 20th January 1871.

2. I find that during a period which includes 1869, and a few months of 1870, 245 attachments of land were made. In 82 of these cases land was temporarily alienated under Section 244; in 121 cases the decrees were satisfied somehow by the judgment-debtors, when

they found that their land was being alienated; in 23 cases land was sold; and the termination of 19 cases is uncertain. Captain Huddleston writes that "sale was recommended". All this procedure was under Section 244.

3. Section 243 seems to have never been put into force at all; and the reason is pointed out by Captain Huddleston, who remarks that it would never pay to put in a manager upon the petty holdings into which land is sub-divided in this Province.

4. Thus I gather that Section 244 is not unfrequently used to avoid the extreme measure of sale of land in satisfaction of debt. The next question is whether the working of this section has been on the whole beneficial, and whether it is expedient to keep the law as it stands.

5. Captain Huddleston bases his opinion on grounds rather strictly utilitarian. He believes these sections to have been framed probably in the interest of the State revenue, perhaps in the interest of landed proprietors. On the first hypothesis he shows that the State must gain by getting rid of a bankrupt tenant; on the second, he argues that an agriculturist has no right to expect more protection from creditors than a merchant. For myself, I believe that the origin of these provisions was *political;* it was thought that sales of land for arrears of debt were contrary to the usage and the feeling of the country, and this notion was, I think, correct. The Resident will observe that all the Native Judges in West Berar who were consulted are opposed to unrestricted land auctions for debt. And if this be really the general sentiment, then we have a sufficient reason for not superseding the sections by the commercial principles which Captain Hudddleston prefers. The merchant's case is not, to my mind, a parallel one, either politically or economically.

6. The practical effect of Section 244 seems to be this: That the revenue officer sometimes intervenes, much as a friendly man of business might do in England, to attempt some compromise or arrangement whereby an unlucky proprietor may retain some hold on his land. I can think there can be no harm in permitting this by law, especially as the Natives of the country approve it. Captain Huddleston in his last paragraph would transfer entirely to the Judge this power of intervention; but as the section now runs, the Judge is already invested with authority to decide ultimately whether any expedient proposed by the Collector shall be adopted.

No. 481, dated Akola, the 27th January 1871.

From—Captain R. HUDDLESTON, Deputy Commissioner, Akola District.

To—The Commissioner, West Berar.

WITH reference to your Nos. 3236 and 3713, dated 14th October and 24th November 1870, respectively, I have the honour to append a statement in the form given in Nagpore Judicial Commissioner's circular No. 23, and to report as follows.

2. The provisions of Section 243 of the Civil Procedure Act have not been in use in this division, and therefore the columns Nos. 4, 5 and 6 of the statement are left blank.

3. From January 1869 to the end of September 1870, 132 decrees, in which the judgment-creditors sought to sell the lands held by debtors, were referred to the revenue branch. In 55 of these the revenue officers succeeded in temporarily alienating the fields, generally to the plaintiffs. In 60 the judgment-debtors satisfied the decrees when they found that their lands were being alienated. In 19 cases sales were recommended, where it was found that from existing mortgages the actual tenant had retained for himself but a small share in the ownership. In some cases the sale proceeds fell short of the debts.

4. The two sections in question are permissive in their action, and calculated to stave off the last resort of the creditor—the sale by auction of the debtor's immovable property. I don't think any such sections would have found a place in a Bombay or Madras Code, that is, in Provinces where the land tenures are ryotwaree or separate, instead of being joint communistic as in Bengal. They were doubtless originally made in the interest of the Government revenue, which would be imperilled by the rash introduction of a foreign outsider into a jealous community.

5. But Berar comes in the first mentioned class, and from this point of view there can be no objection to the sale of the debtor's land, for the State must gain rather than lose by the removal of a bankrupt tenant for whose revenue there is no joint responsibility, provided his land be sold at the right time of year.

If, on the other hand, the benevolent view is taken, that the indebted agriculturist must be let down easier than others, because he is an agriculturist, "I can only say that an agriculturist, divested of his implements of tillage (which can be attached), must be more unhappy than if he were sold out from his land. No grace is allowed to the stock of the merchant, though rates may be low, and I cannot see on what principle the ryotwaree holder can be treated on other rules. At any rate, if there are to be exceptions as to the kind of property liable, I think the Judge who hears the case, and knows how the parties have behaved prior to the decree, should decide how it is to be executed rather than the executive officer.

P. S.—Messrs. Bemonjee's and Shrikrishur's reports are enclosed.

No. 3043, dated Booldana, the 30th December 1870.

From—Major J. Allardyce, Deputy Commissioner, Booldana District.

To—The Commissioner, West Berar.

I have the honour to acknowledge the receipt of your No. 3714 of 24th September 1870, calling for a report upon the working of Sections 243 and 244, Civil Pr.cedure Code.

I append a statement of the number of cases disposed of in 1869: I have been unable to get returns for 1868. From this statement it will be seen that the number of attachments of land made in execution of decrees in 1869 was 117.

Land was sold in 23 cases only; in 33 cases land was temporarily alienated under Section 244, and in 61 cases the decree was satisfied by mutual arrangement of the parties and attachment removed.

2. In no instance was Section 243 put into force. Indeed in Berar, where the holdings are small, placing one or two fields under a manager would not be advisable, though, where a large estate is concerned, it would be advantageous, and neither mortgage, nor lease, nor sale of a portion of the land has been resorted to.

3. I beg to append an abstract in English of Mr. Tajoodeen Hoosain's opinion, the only Native Judge in the district, whose remarks I thought it necessary to obtain.

Mr. Tajoodeen would have the land in all such cases made over to the plaintiff until the judgment-debt be liquidated. He objects to land being sold.

4. In my own opinion the sections afford every scope for settling decrees where practicable, without resorting to the extreme measure of selling the holding; and I do not see how any fixed plan of procedure, as proposed by Mr. Tajoodeen, could be laid down,—cases occur where no objection can exist to the sale of the land held by the defaulting, or perhaps absconding, debtor, and putting a stop to sales of land altogether would be unfair.

MEMORANDUM.

As regards the working of Sections 243 and 244 of Civil Procedure Code, the Assistant Commissioner Mr. Tajoodeen Hoosain reports as follows:

1st.—That Sections 243 and 244 were not applied in 1868; his return shows the working for 1869 only.

2nd.—That people will not be benefited were land, under attachment in execution of a court's decree, placed, as contemplated by Section 243, under a manager, as the process must necessarily take a long time and involve expense; it may, however, be advantageously adopted in some cases.

3rd.—That temporary alienation of land for liquidation of debt, in execution of a court's decree, is preferable; this mode eases a debtor of his liability, and retains him the ownership of his land; this is in every way the best mode of settling debts.

4th.—Sale of land is very detrimental to a debtor,—he is irrecoverably deprived of what is the source of his livelihood.

5th.—That the Sections 243 and 244 should be so altered as to make the Government rent-paying land only temporarily alienated.

6th.—That plaintiff, until liquidation of debt by defendant, be compelled to retain possession of Government rent-paying land. This will put a stop to sales of land.

7th.—That he has no particular change to recommend as regards the disposal of houses.

J. ALLARDYCE, *Major*,
Deputy Commissioner.

No. 65, dated Argaon, the 20th January 1871.

From—SHRIKRISHNA NURHUR, Esq., Extra Assistant Commissioner.

To—The Deputy Commissioner, Akola District.

I HAVE the honour to submit herewith a statement showing the results on sales of land under Sections 243 and 244 of the Civil Procedure Code in the years 1869 and 1870.

2. From column 3 it will be observed that there are a few instances of sales of land in execution of decree, in consequence of the order under which the object is met with by temporary alienation of land.

3. Section 243 of the Civil Procedure Code has not been resorted to either by the court or the judgment-debtor; columns 4, 5 and 6 are therefore blank.

4. Column 7 exhibits the number of cases in which temporary alienation of land has been effected, and column 8 indicates that of cases in which neither sale nor temporary alienation of land was necessary, because the judgment-debtor satisfied his creditor after attachment.

5. I think the effects of both the Sections 243 and 244 on sales of land are most satisfactory. Though, in consequence of the very limited powers of this court, there is seldom or no necessity of having any recourse to Section 243 both on the part of the court or the judgment-debtor, its occasion is certainly sometimes needed in courts of extended jurisdiction, and the absence of its provisions will, when their application is requisite, be felt very severely by the parties. Land does not yield so much by its sale, as it gradually does by its cultivation. The sale does not frequently realize sufficient to cover the amount of the decree; it seldom satisfies the creditor, and often ruins the debtor by whom the land is much valued when it is the source of his livelihood. The provisions of Section 243 are in my opinion most salubrious. The first part of the section allows the court discretionary power of appointing a manager when the sale is not likely to satisfy the whole amount of the decree, and is disadvantageous to the debtor by reason of its not realizing the proper value; this measure is beneficial both to the judgment-creditor and the debtor. The latter part of the section

empowers the Judge to postpone the sale when it is probable to satisfy the decree, but the judgment-debtor is not desirous of parting with his land without hurting the judgment-creditor.

6. Section 244 also contains a wholesome provision; it enables the Collector to interfere when the Judge has failed to observe the disadvantages of the sale, and to recommend a measure almost productive of the same results as the exercise of the power by the Judge under Section 243. The Collector in stating his objection to the sale of land has also another point in view besides those considerations which necessitate the Judge to appoint a manager, viz., the prevention of the foreigner from taking the place of the Native cultivator of land and the securing the position of his subjects. I, however, suggest an addition of a clause to this section to the effect that, whenever measures are taken under Sections 243 or 244, the judgment-creditor may be allowed an interest at 6 per cent. per annum until the final satisfaction of the decree, if the Judge has allowed no interest in the same.

7. Since the introduction of the procedure under this section the judgment-creditor applies for the attachment of land only when he is left no other alternative; and though this denudes the debtor of all his movable property, he is not for ever deprived of his land—the means of his livelihood. If you had not exercised your power under this section, the decrees in the number of cases shown in column 7 of the statement would not, perhaps, have been completely executed, and the debtor would have been entirely ruined: you have now secured the interests of both the parties.

8. The enclosures of your Mahratta *yadi* No. 49, dated the 14th instant, are herewith returned.

Statement shewing the results on sales of land under Sections 243 and 244 of the Civil Procedure Code by the Argaon Civil Court during the years 1869 and 1870.

1	2	3	4	5	6	7	8	9
Districts.	Year.	Number of cases in which land was sold in execution of decrees.	Number of cases in which land was attached and placed under a manager under the first part of Section 243.	Number of cases in which sale was postponed under the latter part of Section 243, with a view to the realization of the amount of the decree by mortgage, lease, or private sale of a portion of the land.		Number of cases in which land was temporarily alienated.		REMARKS.
				Decree realized without sale of the land.	Sale of land enforced.	Procedure under Section 244 followed.	Procedure of Section 244 not followed.	
Akola District...	1869	4	......	......	......	23	14	
Ditto ...	1870	1	......	......	......	17	16	

ARGAON;
The 20th January 1871.

SHRIKRISHNA NURHUR,
Extra Assistant Commissioner.

WEST BERAR DIVISION.

Statement showing the results of procedure adopted under Sections 243 and 244 of the Civil Procedure Code.

1	2	3	4	5	6	7	8	9
Districts.	Year.	Number of cases in which land was sold in execution of decrees.	Number of cases in which land was attached and placed under a manager under the first part of Section 243, Civil Procedure Code.	Number of cases in which sale was postponed under the latter part of Section 243, with a view to the realization of the amount of decree by mortgage, lease, or private sale of a portion of the land.		Number of cases in which land was temporarily alienated.		REMARKS.
				Decree realized without sale of land.	Sale of land enforced.	Procedure of Section 244 followed.	Procedure of Section 244 not followed.	
Akola ...	1869 and 3 quarters of 1870.	19	......	......	......	49	60*	* Compromised.
Booldana ...	1869	23	......	......	......	33	61	
		42	......	......	......	82	121	

AKOLA;
The 4th February 1871.

T. W. STACEY,
Head Clerk, for Commissioner, West Berar.

No. 39, dated Hyderabad the 23rd February 1871.

From—Captain R. Bulloch, Offg. Second Assistant Resident, Hyderabad.

To—The Secretary to the Government of India, Home Dept.

In continuation of this Office letter No. 37, dated the 16th instant, I have the honour, under instructions from the Resident, to forward copy of a further report received from the Commissioner, East Berar Division, in regard to the practical effect of the working of Sections 243 and 244 of the Civil Procedure Code.

No. 275, dated Oomrawuttee, the 13th February 1871.

From—Major W. Nembhard, Commissioner of East Berar.

To—The First Assistant Resident, Hyderabad.

With reference to your circular No. 749, dated 18th November last, and in continuation of my No. 2518 of the 19th idem, on the subject of the working of Sections 243 and 244 of the Code of Civil Procedure, I have the honour to forward copy of a statement showing the only instances in the Oomrawuttee District in which land paying revenue to Government has been sold in liquidation of decree. The amount of the decree was Rs. 805-12, and the judgment-debtor's right to cultivate six fields paying a rent of Rs. 71-8 was sold for Rs. 458-15, which amount was paid to the judgment-creditor.

2. The statement attached to the Central Provinces circular No. 23, received with your No. 749, under acknowledgment, must remain blank, for none of its columns appear to me to apply to the only six instances of sale which have occurred, five of which I have previously reported.

3. The general prosperity of the landowners in Berar is well known; and this report shews how extremely rare are the instances in which they have failed to save their land from sale in liquidation of decrees against them.

It is very possible, too, that some of the six judgment-debtors, whose rights have been sold, are not actual landowners, they may be sub-tenants holding on short leases; and the alienation of such temporary rights is not the kind of alienation which need give us concern, or to save which Sections 243 and 244 were enacted. When occasion requires it, I am sure that the Deputy Commissioners would avail themselves of the provisions of the sections to save the debtor's property as far as possible. Moreover, the rule which requires the sanction of the Commissioner or the Resident before land can be sold in execution of decree, enables a check to be kept up, and no sale can take place until the Commissioner knows pretty certainly that all other means of satisfying the decree have been exhausted.

Statement showing the result of working of the Sections 243 and 244 of the Code of Civil Procedure regarding the sale of land in execution of decree.

Name of village.	No. of each field or description of the lands.	Rent of each field.	Amount of decree in execution of which the land was sold.	Whether the rights of judgment-debtor were sold in perpetuity or only for a time, if so, how long.	Amount realized by the sale.	Amount paid to judgment-creditor.	REMARKS.
Boregaon and Hirpoor.	*Boregaon.*	Rs. As. P.	Rs. As. P.		Rs. As. P.	Rs. As. P.	
	Field No. 16	22 0 0					
	Ditto 62	9 0 0					
	Ditto 100	12 0 0					
	Ditto 76	4 0 0	805 12 0	Permanently and for ever.	458 15 0	458 15 0	
	Hirpoor.						
	Field No. 45	17 0 0		Ditto.			
	Ditto 29	7 8 0					
	TOTAL ...	71 8 0					

OOMRAWUTTEE;
The 9th February 1871.

J. G. BELL,
Deputy Commissioner, Oomrawuttee.

To *His Excellency the* VICEROY *and* GOVERNOR GENERAL *of India*, *&c., &c., &c.*

PETITIONERS complain of the evils attendant on the usury laws now in force, under which Native usurers and money-lenders charge exorbitant rates of interest and compound interest, and by unfair and cruel practices so increase the amounts of the loans due them that they at last force the sale of hereditary estates of their debtors, and either themselves purchase them at inadequate prices, or get others to do so, thus causing the ruin of thousands of landholders and keeping petitioners in perpetual fear of the loss of their estates.

Petitioners, therefore, hope that the above laws now in force may, as soon as possible, be either repealed or modified, and other laws lowering the rate of interest and abolishing the sale of immoveable hereditary property be substituted therefore, the rules hereinafter mentioned embodying a convenient mode of paying decreed monies be adopted. They further pray that all sales of the aforesaid kind of property be suspended until a full consideration of the matter by Government, or until the passing of other laws in lieu of those complained against, and that the monies decreed, or hereafter decreed, by the court, be payable by instalments without interest, or with interest at low rates under Section 194 of Act VIII. of 1859 in cases in which the court has not, or does not, or shall not order payment by such instalmemts.

Petitioners' representations are detailed at length in the following paragraphs, their primary object being set forth in paragraph 6:

1. It is not unknown to the ministers, legal advisers, and officers of Her Majesty, Queen Victoria, Sovereign of England and Hindustan, that money transactions, commercial dealings, the settlement and collection of revenue on zemindaries and other property, &c., have been and are carefully regulated in all countries, under all kings, past and present, and not merely in India; and that rulers and statesmen of every age have in different ways protected the persons and property of the people under their sway.

2. Petitioners acknowledge with praise and gratitude the good faith and admirable management which have distinguished the administration of the British Government. Many laws and regulations have been passed ensuring the safety and welfare of all people (whether subjects of Government or not), and the protection of the person and property, &c.; many courts of justice have been established; dangerous and difficult roads have been rendered safe and accessible; the introduction of railways has made travelling easy, highway-men and robbers have been extirpated; and means of quick travelling have been introduced which were unheard of under former rulers.

3. It is a well known fact that during the reigns of former rulers landed estate did not occupy the rank it did three years ago, nor had trade attained the development it has now reached. The want of status of landed estate in the said reigns was, petitioners think, due, among other causes, to the fact that under the Hindu rajahs, and later under

the Mahomedan rulers, all Government offices, high and low, were held by Hindus or Mussulmans only, and the greater portion of such officers being hereditary people were happy and prosperous; therefore, though landed estates did not occupy the position it does now, landholders had many rights and much profit, and if owing to the custom of granting jaghirs and mafeedaries their rights were not always considered, still their wealth enabled them to live in comfort. Petitioners, however, acknowledge that not to guard the rights of zemindars when making such grants was unjust and inconsiderate.

4. From the very commencement of British dominion the status of landholders was raised above what it had been under Native rule; and from two years before the 5th settlement, till its termination, the value of land went on increasing, because the people of Hindustan felt themselves secure in their proprietary rights, did not fear the oppression of Government officers, and had no apprehension of such distress as was occasioned by the mismanagement and negligence of Native rulers, notably in the case of the King of Oudh.

5. Under the British dominion not only has land become valuable but the position and rank of landlords, in respect of high descent and good family, is no less respected than under the rulers of bye-gone days. Moreover, excellent regulations have been framed for the release of estates acquired by foul and unfair means. In 1831 a special Commissioner's Court sat to try such cases, and restored to many landholders estates of which they had for years been unjustly deprived. Petitioners feel it impossible to express the extent of their gratitude for these acts of justice on the part of Government, and their object in noticing in paragraph 3 that during the reign of former rulers all offices of State were held by Hindus and Mahomedans only, was simply to account for the then low value of landed estate, and not to argue that high offices should be given to Hindustanees as well as to Englishmen;—such was far from their intention, and is indeed needless, as the Government has declared Hindustanees eligible for all appointments, provided they are possessed of certain qualifications. The Government, too, has instituted colleges, and opened schools in many villages for the diffusion of knowledge, and appointed professors and provided the means of teaching the arts and sciences. These advantages never existed during the reign of any of the rulers of olden times, and they have filled the natives of India with the confident hope that they will get appointments according to their respective desserts.

6. Petitioners and their ancestors and all subjects have passed and still pass their days in comfort and ease under the benignant and able administration of Her Britannic Majesty, and they are thankful for these blessings. They acknowledge that many laws have been promulgated which have effectually preserved their persons, rights, and estates, but, *per contra*, there are certain existing rules and regulations which tend to expose their hereditary property (the source of their maintenance) to great and imminent risks, and keep the whole of the agricultural class in a state of disquiet and uneasiness.

Under these circumstances it appears to the petitioners that their best course is to represent their grievances to Government, and pray that after a mature consideration of the difficulties with which they are beset as set forth in this petition, the Government may be pleased to repeal at once the two measures which press most heavily on them and have caused, and are causing the ruin of many zemindars of high social position. These measures are—

First.—That which authorizes high rates of interest. Under cover of this measure many money-lenders and mahajuns, not satisfied with charging interest at any rate they may desire, on harsh and ambiguous conditions, swell the amount of their claim by improper and unjust charges.

Second.—The harsh rule authorizing the sale of joint property, villages and hereditary estates, &c., in execution of decrees of civil courts, under which many such properties of large value have already been sold, or are about to be sold off at inadequate prices to satisfy the inflated claims of money-lenders and bankers.

7. Petitioners will first pray for relief from the cruel effects of the first measure, and in doing so enumerate the kinds of debtors and creditors, showing the helplessness of the first, and the harshness of the latter, together with the measures they adopt to increase their claims; they will then take up the subject of sale in execution of decrees, and so on in due order.

The Government are well aware of the fact that the petty as well as great mahajuns have amassed their wealth through dealings in money, though they may have ultimately embraced some other profession. When the ceded and conquered Provinces first came under the dominion of the British, their officers saw that Native mahajuns, not content with the stipulated rate of interest, added thereto illegal charges which they deducted from the amount lent, at the time of making the advance. Therefore, for the benefit of the people and to suppress these oppressive doings, Act XXXIV. of 1803 was passed, by which the rate of interest was limited to one rupee per cent. per mensem, and it was provided that, if a higher rate of interest than one per cent. per mensem be mentioned in the bond, then the whole of such interest shall be forfeited, or, if the interest be deducted in advance from the capital sum mentioned in the bond, or any charge beyond the stipulated interest be made, then the whole claim shall be barred. With the exceptions of a few mahajuns (of whom more shall be said hereafter) who had never charged more than one per cent. per mensem, the rest continued to act in contravention of the said law, and to charge exorbitant rates of interest, especially in the case of extravagant and misconducted persons whom they misled and got into their power (*vide* the many suits instituted by creditors and dismissed by the late Sudder Court, some of which would have been specially quoted by petitioners had they not been destroyed in the mutiny). But although certain debtors, in spite of the

passing of Act XXXIV. of 1803, fell into the power of the money-lenders and were obliged to give a higher rate of interest than one per cent. per mensem, yet the money-lender could not by help of the law get the debtor into his power and force him by threats to give a high rate of interest, adding the quarter or half year's interest (if not paid) to the principal and charging interest thereon. For a year or so, after the passing of Act XXVIII. of 1855, relating to usury laws, the mahajuns agreed among themselves to refrain for the time being from demanding higher rates of interest, but since then, with the exception of a few mahajuns who still observe their old rules, the rest, upon the strength of the said Act, charge heavy interest, and interest on interest, and insert in loan-bonds conditions impossible of fulfilment by the debtor, and, with the view of increasing the amount of their claim, add thereto many other items of charge besides that of compound interest. The petitioners aver the truth of their statements and will later, in the proper place, mention some of the conditions now inserted in loan-bonds; for further proof of the correctness of their statement they refer to the hundreds of bonds executed subsequent to the year 1855, which may be found in every court of justice, and observe that proof of other illegal charges, &c., could be obtained were an enquiry set on foot. Petitioners feel sure that the legislature and members of Government are already in possession of these facts, and to this knowledge they trace the proviso in Section 194 of Act VIII. of 1859, which empowers civil courts to determine, on reasonable grounds, whether decrees for money shall bear interest or not. But although in most cases of debt for large amounts there generally exist reasonable grounds for payment of the sum decreed by instalments, with or without, or at reduced rate of interest, the Native judical officers seldom take advantage of the aforesaid section, and the debtors, through fear of incurring the displeasure of money-lenders and creditors, hesitate to petition the court on the subject.

Under these circumstances justice demands that the oppressive proceedings of creditors and mahajuns, in increasing the amount of their claims by charging heavy rates of interest and compound interest and other unfair means, and the friendless, helpless condition of debtors, who are in danger of losing their landed estates, their only means of subsistence, should be taken into consideration.

Petitioners have no doubt that they, as well as other zemindars, would be in a position to liquidate their respective debts had the money-lenders acted in good faith in their dealings and not increased the amount of their claims by high interest and such other means as have been above, and will be hereafter, stated.

8. Petitioners think that Act XXVIII. of 1855, relating to the power to charge high rates of interest, was framed on the principle of a law which has been in force for some time in England, the object of which, perhaps, is to place no limit to the amount of benefit an owner

may derive from the employment of his capital, whether money or goods. If the petitioners' surmise is a right one, they have several objections to urge against it—

1stly.—An enactment based on the principle of English law, and placing no limit to the amount of interest on loans, when applied to India, brings ruin on the poor people and more specially upon land-holders, because the people of England, generally speaking, are prosperous and powerful. There, both creditors and debtors carry out their engagements. Englishmen have fixed incomes and expenditures, and each individual derives large sums from commerce, service, or other lawful means. These advantages India and her people cannot boast of; hence many of the English laws and customs are not adapted to the people of India.

2ndly.—For the benefit of debtors and protection of landed estates, &c., the court is empowered, under Section 194 of Act VIII. of 1859, on reasonable grounds being shown, to allow payments to be made by instalments, either with or without interest; and since the last few years the rule has been to allow interest at the rate of 8 annas per cent. per mensem from the date of the decree. These three rules would now seem to be in existence, yet petitioners think they must be mistaken in supposing that they are so, as they conflict with each other on the question of interest in the following way, viz.: By the first mentioned Act the parties may settle the question of interest among themselves, and in special cases the court has power to award interest at the rate of Rs. 12 per cent. per annum; then under Section 194 the award or non-award of interest is in the discretion of the court; and again by the last mentioned rule the rate of interest is limited to 8 annas per cent. per mensem. It is contrary to reason to suppose that the intention of Act XXVIII. of 1855 is to promote monetary dealings, for the Government have the welfare of the people at heart, and would not encourage them to contract debts by indulging in extravagance. Extravagance leads to debt, and debt leads to loss of landed or other property, and consequent misery and distress. The Government, therefore, with a view to prevent extravagance have in certain cases assumed the management of the estates of persons who have proved themselves unfit to look after their own affairs. In the Province of Oudh the authorities, seeing how the landlords were being ruined by the high rates of interest, decided that in all cases (the terms of the bond to the contrary notwithstanding) the interest should be reckoned at one-half the principal, that is to say, if a taluqdar owed Rs. 30,000, Rs. 15,000 should be added for interest, the total sum 45,000 being payable by instalments without interest. Petitioners, however, request it to be understood by Government that the above statement of theirs is based on heresay only; neither can it be correct to assume that Act VIII. of 1859 is intended for the benefit of mahajuns, and Section 194 and the last mentioned rule for the benefit of debtors for this would involve a want of impartiality and even-handed justice.

Under Act XXVIII. of 1855 creditors and mahajuns are, in the first instance, empowered to impose high rates of interest. Secondly, it is at the will of creditors and mahajuns to fix the amount of interest and terms of payment. Then Section 194 of Act VIII. of 1859 confers on the court the unlimited powers of awarding payment by instalments either with or without interest. Here, in the first instance, no limit is fixed to the rate of interest nor to the period of payment by instalments; 2ndly, while repayment by instalments either with or without interest is, on good grounds being shown, left to the discretion of the court, and not to the option of the debtor, mahajuns and creditors are empowered to impose heavy rates and dictate terms of payment. The 3rd rule provides in all cases (not excepting cases relating to debts) for the award of interest from the date of the decree at the rate of eight annas per cent. per mensem. Now though by this rule creditors and mahajuns, (decree-holders) are to some extent debarred from receiving high rates at their own will, or under the conditions of the bond, yet this rule is very limited, and it has opened to them a channel for imposing unfair charges; for example, in the event of an *ex parte* or other decree, the deree-holder may, without difficulty, have the zemindary and other property put up to sale in execution of the decree, and he thereupon exacts from his debtor a large sum as consideration for postponing the sale, or else himself directly, or through another person, buys in the estate under its value. Hence the disadvantages under which debtors are placed by Act XXVIII. of 1855 are not compensated by the aforesaid rules, and there is no distinct mode in which the court can come to the assistance of unfortunate debtors. It seems likely that the legislature have thought it inexpedient to limit the rate of interest, but the petitioners are of opinion that, unless a low limit is placed on the rate of interest, much ruin and evil must follow; in other words, they think that, unless Act XXVIII. of 1855 relating to usury is speedily amended, the remaining old zemindars will very soon lose their estates.

9. Petitioners having made known their complaints against the provisions of Act XXVIII. of 1855 deem it incumbent upon them to explain the causes which lead zemindars into debt, the reasons of the increase of their liabilities, and the nature and manner of the unjust demands of mahajuns and creditors. In the first place they would specify the several classes of debtors and the cause of their indebtedness. They would divide them into two classes—

Class 1st includes those persons who are forced into debt by accident or necessity, such as providential visitations like dearth, hail-storms, or too much rain, which destroy the harvest and render the cultivators unable to pay their rent to the malguzar, who, nevertheless, must satisfy the Government demands. This case occurs but seldom.

2ndly.—Marriage or funeral ceremonies, when, according to the custom of the land, it is necessary to collect and entertain one's relations.

3rdly.—The purchase of portions of hereditary estate put up to auction, either by reason of its being hereditary, or to prevent the disagreements which might be expected if a stranger were allowed to buy it, or the purchase of some other land.

4thly.—Instituting or defending civil or criminal suits.

Class 2nd includes persons who recklessly squander away their money in dissipation and extravagance. If these persons, on attaining their majority, come into possession of any property, they launch themselves headlong into a career of profligacy, and, acting upon the evil counsels of designing men, indulge in every kind of expensive luxury and voluptuousness, utterly regardless of consequences. They are heedless of the welfare of their dependants, and do not give a moment's thought to the management of their own affairs, and are thrown into debt by reckless and unnecessary extravagance.

If viewed superficially, the petitioners submit that the above causes and circumstances would perhaps negative their complaints against the mahajuns and creditors, as the indebtedness of both the said classes is due to themselves; but the petitioners submit that in cases of debts incurred since 1855, not only should the causes of the original debt be looked into, but still more so the causes of its increase.

Petitioners again emphatically assert (as they will hereafter show) it is the unfair actions and proceedings of the mahajuns and creditors which so increase the amount of debts that eventually the estates are brought to the hammer and sold at most inadequate prices.

Petitioners now proceed to give a short description of the different classes of mahajuns and creditors; of the manner in which they carry on their business; of the avarice and oppression which characterize the doings and actions of many of them; and of the helplessness of landlords.

Petitioners divide the mahajuns and creditors into four classes:

Class 1st includes those mahajuns and creditors who carry on their transactions in an open and straightforward manner, and adhere to their words and promise. In their firms the maximum rate of interest is one rupee and its minimum rate is four annas per cent. per mensem. In spite of the enactment above referred to, they still follow this rule. But few mahajuns belong to this class. They do not deal in small sums, save in exceptional cases, and they exercise much patience before causing a property to be sold in execution of decree. They also make great allowances for those with whom they have had dealings for a length of time; they do not knowingly advance loans to misguided men for wrongful and extravagant purposes. Their object is to see the debts liquidated without injury to the person or property of the debtor. They, however,

do not advance loans of small amount to zemindars at a less rate of interest than one rupee per cent. per month.

Class 2nd includes those mahajuns who generally charge interest at one rupee or less, but sometimes at a higher rate. On non-fulfilment of a promise, they wait a little, and then take legal proceedings. They correctly enter in their books and endorse on the bond the sums of money paid by a debtor at different periods, and, when occasion requires, they may be found lenient towards a debtor.

Class 3rd includes those mahajuns the greater number of whom, ever since the passing of Act XXXIV. of 1803, have been in the habit of charging interest (by fair or unfair means) at the rate of more than one rupee per cent. per mensem, besides other items of charge in the shape of nuzranas and perquisites for their servants and agents. The Hindu mahajuns, in addition to the above-mentioned items, are in the habit of taking offerings for the Hindu deities, such as Ram, Luchman, and others; and also on the Dushera and other festivals for alms and charitable donations at the principal places of Hindu pilgrimage. Some of them again are in the habit of deducting the interest from the principal, or advancing a less sum than is entered in the bond; for example, if a mahajun advances Rs. 400, he takes a bond for Rs. 500, charging interest thereon at one per cent. per mensem to keep within the law. In these cases it sometimes happens that mahajuns, immediately after the execution of the bond, institute a suit, and, having obtained a decree by consent of the defendant thereupon, advance the amount of the loan. The whole of this class of mahajuns, especially at the time of causing a notification to be issued for the sale of a property, are untrue to their oral promises. With the exception of a very few most of these mahajuns, immediately after the passing of Act XXXVIII. of 1855, and several of them one or two years later, commenced receiving from the debtors high rates of interest and compound interest, besides other additional charges.

They generally observe the following mode of transacting business:

When a person applies for a loan to a mahajun, the latter receives him with much courtesy and politeness; if in the course of coversation it appears that the loan is required very urgently and very soon, that if it is not procured within a day or two the property of the applicant will be sold, a suit will be instituted against him, or some other misfortune will be the consequence, and that there is not time to apply anywhere else, then the mahajun, trusting to the helplessness of the borrower, pleads the hardness of the times, the scarcity of money, &c., and exacts from him most onerous conditions, which are entered into a draft agreement; to these others still more onerous are added in the fair copy, and the borrower is only persuaded to subscribe them by the assurance that they are merely *pro formâ*, and will not be enforced. But if it transpires

that the necessity is not very pressing, and a delay of 10 or 20 days is feasible, then he dismisses the applicant with hopes and promises, and sends for him again one or two days previous to the time when the money will be urgently needed; if he finds, in the course of the second interview, that a loan is procurable elsewhere at a cheaper rate of interest, then he offers to advance the money at the same or even at a reduced rate, so as to break off all negotiations with other parties; and this end once attained, he proceeds in the manner above described, and forces his victim to enter into an agreement. At the time of advancing money the mahajuns deduct therefrom certain sums above referred to as rights, commission, &c., at the rate of 1½ or 2 per cent. When the debtor goes to him to pay interest in quarterly or half-yearly instalments as stipulated, the mahajun looks seemingly glad, and endorses the amount on the back of the bond. At the time of the payment of the second instalment he does the same, and to gain the confidence of the borrower shows him the entry in his private account book, tells him he will lend any further sums of money that he may require, and begs him not to worry himself about his bond. The debtor is thus deceived, and, having acquired faith in the mahajun, on future occasions gives or sends the instalments without seeing the payment thereof endorsed on the back of the bond. But the mahajun enters the amounts of the instalments as they fall due with compound interest in his private books against the debtor's name (giving no credit for payments), so that after the debtor has been paying for three or four years he is pressed for the repayment of the whole amount of loan, &c., and, being threatened with legal proceedings, he executes a fresh bond on still harder terms than the last: if, however, a suit is instituted, and the debtor dispute the unjust demands of the lender, the latter, by promises of leniency in future dealings, persuades him to admit the justice of the claim in court. He, the lender, in the meanwhile so arranges as to prevent others from advancing money to the debtor, and the moment a decree is obtained he causes it to be executed, and puts up the property of the debtor to sale. In such a case the debtor is either obliged to submit to further exactions and renew the bond, or to pay off the amount from his own resources, or by means of another loan. Thus debts upon debts accumulate. If the amount of the decree is not paid, the mahajun purchases the property of the debtor either himself or gets others to purchase at an inadequate price. One of the best opportunities of concealment of payments made without written acknowledgment presents itself when a debtor dies leaving a wife or daughter (*purdahnusheen* ladies), or a minor or inexperienced son; the mahajun then denies in court the receipt of payments made by the deceased from time to time, and he mostly succeeds in obtaining a decree in his favour, for the court generally trusts to the terms of the bond, and not to oral evidence. It is also a rule among mahajuns that, if the money is not urgently required, they advance it many days after the date of the execution of a bond, reckoning the interest from the

date of such execution. When extravagant and profligate men, as mentioned in class 2, are applicants for a loan, the class of mahajuns under discussion are delighted, seeing in them a source of unlimited wealth. With the aid and co-operation of certain go-betweens they manage with inconceivable cunning to enter into money transactions with them. The more effectually to get them in their power, they on the first one or two occasions advance money to them at a reduced rate of interest, and then by degrees raise the said rate and narrow the period of payments, and impose heavy conditions; at last they advance Rs. 500 on a bond for Rs. 700, and so on add former debts to those newly incurred, so that a loan of Rs. 1,000 becomes one of Rs. 1,500, one of Rs. 2,000 of Rs. 3,000, and so on. They also purchase shawls, jewels, &c., at a cheap price, and sell them to such debtors at the highest price, and get those items entered in bonds with interest. Thus they extort large sums of money by unfair means, and obtain decrees of court, in payment of which they accept new bonds, until finally their victim's landed estate is brought to the hammer and purchased at the cheapest price. In short their merciless and unfair demands and extortions have reduced many great zemindars and respectable gentlemen of this district to a state of abject want and penury.

Petitioners believe that the oppressive proceedings on the part of these mahajuns and creditors exceed by far those of the persons for the investigation of whose conduct the Special Commission was appointed before the fifth settlement, as would be ascertained were a special court appointed to enquire into the matter; indeed, petitioners submit that it is incumbent on the Government to appoint a similar Commission, so that justice may be done with regard to those sales which have been effected in execution of decrees under bonds executed after the year 1855.

Class 4 includes village mahajuns, some of whom, especially since the year 1855, have amassed lakhs of rupees through money transactions. This class of mahajuns employ to a greater degree the same means of extortion as class 3; besides which they make incorrect entries in their books (which are irregularly kept), and institute suits and obtain decrees upon false documents. Their dealings are generally with cultivators and artisans; their words and promises are unworthy of credit, and their knavery is well known. But what can the needy do? Some of the village mahajuns and money-lenders (though they receive high rates of interest) act in good faith. They are generally worth from Rs. 30,000 to 40,000. They keep irregular books, and carry on dealings chiefly with cultivators and small zemindars. They are patient and moderate in their demands, seldom resort to the courts, and very rarely enforce a sale; they say that they have gained thousands of rupees through the debtors, and do not wish to see them ruined by the sale of their property. These mahajuns are worth from Rs. 200 to Rs. 15,000 and upwards. They generally make advances of grain and sometimes ready money in small sums to cultivators and persons of other professions. They transact business generally through books and sometimes through

bonds. They also lend out money on jewellery, &c. The petitioners do not deem it necessary to enter into details regarding the mode in which these advances of grain, &c., are made; they have now sufficiently described the several classes of mahajuns and creditors, and in continuation of the cursory remarks already made will proceed to give a detailed account of the causes to which the increase of debt is attributable.

Cause 1st is Act XXVIII. of 1855, under which mahajuns and money-lenders of the 2nd, 3rd and 4th classes think themselves authorised to receive high rates of interest, and mahajuns and money-lenders of the 3rd and 4th classes consider they can lawfully add thereto other unfair charges.

Cause 2nd.—Debtors are unable to fulfil the many hard conditions contained in the bonds which their necessities force them to execute; indeed, the lenders know they are impossible of fulfilment, but insist on their insertion as a means of ultimately increasing the amount of the debt. Some of the conditions are as follows: *Firstly*, that the debtor shall pay interest by quarterly or half-yearly instalments, according to the Fuslee or Christian year; and that, if the interest is not paid on the due date, it shall be reckoned as principal, and interest shall be charged upon it. Thus in default interest is added to interest, and in time the debt amounts to so considerable a sum that it is beyond the power of the debtor to pay it. *Secondly*, if the interest payable by instalments, or the principal with interest, is not paid at the appointed time, the debtor shall have to pay, besides what is mentioned in the bond, interest at Rs. 2 per month from the date of the bond to the day of the payment. If from some unavoidable cause a few days delay occurs in the payment of interest, or principal with interest, the money-lenders charge in excess of the fixed interest various items, which exceed by double or treble the original debt. *Thirdly*, that the interest shall be reckoned according to the Fuslee month and year, and that in years which embrace the intercalary month, the interest for 13 months shall be charged to the debtor. *Fourthly*, that the creditor may (on suspicion that the property under mortgage is to be transferred, or likely to suffer damage, or even in the absence of any such suspicion) without waiting for the expiration of the term institute a suit. The principal object of the mahajun in inserting this condition in a bond is to keep the debtor entirely in his power, and, under the threat of instituting such suit, make him submit to various charges in excess of the interest. *Fifthly*, that receipts, or release, or depositions of witnesses are no proofs of payment, unless the fact of such payment is stated on the back of the bond. Although this condition is not very hard, and cannot be reckoned as one of the causes of the increase of debts, yet some creditor, acting in bad faith, find many opportunities of denying payments by not endorsing them on the back of the bond. The late Sudder Court, however, decided in such cases that proof of payment rendered this condition null and of no avail. *Sixthly*, that if a suit is instituted, the debtor shall admit the claim, and not oppose it, nor ask the court's permission to make payment by instalments. Such conditions as these show the bad faith of creditors in

their dealings. The late Sudder Court ruled that the creditor has no power to force such conditions upon the debtor, and that they are unlawful. *Seventhly*, certain bonds contain a condition that the debtor shall not borrow anywhere else to pay the debt named in the bond, and that, on breach of the said condition, the debtor shall pay double the amount of interest (or such other rate of interest as may be agreed upon) from the date of the bond.

Besides the above there are also other conditions adverse to debtors which the petitioners do not think it necessary to mention.

Cause 3rd.—Many briefless mofussil vakeels appear in suits founded on bonds, on receiving a remuneration five to ten times less than the usual amount of fees fixed by law, because, compared to other cases, these suits are less intricate and give less trouble. The mahajuns gain much by instituting such suits on bonds, for example, in a claim for Rs. 10,000 the vakeel's fees, as prescribed by law, amount to Rs. 350; but the mahajuns would only pay Rs. 25, or utmost Rs. 50, to the vakeel, and, on obtaining a decree, would enter the full Rs. 350 in the charge for costs, and add it to the debt, and thereby clear a profit of Rs. 300 and upwards. The object of the creditor in instituting a suit early is to benefit in the matter of the attorney's fee, and in other ways, and it is with that view they enter these four conditions in the bond.

The petitioners having in the above paragraphs stated some of the causes which lead to the increase of debts, call the special attention of Government thereto, and submit that they bear evidence to the bad faith of creditors and the honesty of debtors.

If it be asked why persons contract debts accede to such conditions, and, having done so, do not fulfil them, petitioners would submit that they have from the very beginning stated that the debtor is helpless. They will now proceed to prove by strong convincing arguments that the debtor is compelled by unavoidable causes to contract debts, to accede to hard conditions, and to leave such conditions unfulfilled, and they submit that he cannot be held culpable on that account: *1st*, because a man cannot be held responsible for anything which he was powerless to do, or not to do; *2nd*, because it must be ascertained whether the debtor acted under compulsion, and was thereby absolved from responsibility, or whether he intentionally acted in bad faith; and, if so, what advantage be derived from his action.

Petitioners are of opinion that, as a matter of fact, good and evil deeds are the outward expression of the doer's intention; for the intention precedes the action. Now no one desires that which is injurious to himself; let it be, therefore, in this light considered whether it is the creditor or debtor who acts in good faith. It is evident that no one unnecessarily involves himself in debt, and the plea of necessity once admitted no blame can attach to a debtor. Now when a person urgently requires a loan for a necessary purpose, the money-lender trades on his helplessness, and imposes conditions which the borrower

well knows to be most injurious to his interests; he also knows that, if he fail in his argreement, the cruel money-lender will show him no mercy; and that, if the case goes into court, he will have to pay heavy costs, in addition to compound interest. The debtor's intention is then from the first to discharge his liability and free his estate from mrotgage, and himself from anxiety. To act in good faith is altogether to his advantage, and no room is left for bad faith, he well knowing that his creditor will, on the slightest suspicion, sue him in court, and that his (debtor's) credit will thereby be destroyed. To act in bad faith would certainly be injurious to him. The case is different with money-lenders; they are rich and fearless of consequences; their love of money and avarice are well known, and they amass wealth in a way impossible to all other classes. When an unfortunate landholder falls into their hands, they exact from him the hardest conditions, and strange indeed would it be if they acted towards him in good faith; for it is by acting in bad faith that they can squeeze money out of him.

Although arguments to prove the bad faith of money-lenders (which is the cause of the increase of indebtedness) are not wanting, petitioners will rest content with what they have already stated, but pray that Act XXVIII. of 1855, the fountain-head of so many evils as enumerated above, be amended.

10. Petitioners now beg to state the grounds and reasons which necessitate the amendment or repeal of Act XXVIII. of 1855:

1stly.—The mahajuns think themselves authorized under the said Act to impose high rates of interest, compound interest, and other charges as aforesaid, so that the effect of its operation has been to ruin many zemindars, and to threaten petitioners and other landholders with a like fate.

2ndly.—Owing to it the status of landed property and the position of landed proprietors of ancient descent are being daily depreciated.

3rdly.—Mahajuns and money-lenders of every class are rich and prosperous, and have amassed immense wealth through the operation of Act XXVIII. of 1855; their customary rate of living is not affected by their gains, and they would still make a handsome profit if the rate of interest were reduced and limited; besides being rich they can embrace any other profession as well. But the zemindars depend for their maintenance solely upon the income of their estates, and the safety of the said estates depends on the rate of interest on loans being reduced and limited.

4thly.—In all enactments passed by the present Government the welfare of the people and their rights and interests are carefully consulted. It is also an obvious fact that from the commence-

ment of the British rule up to the present day landholders have (as was incumbent on them) evinced their obedience and devotedness to Government; they have regularly paid their rents and other charges on account of village expenses, police, &c., &c., assisted in the suppression of crime, the apprehension of thieves, &c., and generally have been zealous in performing the duties entrusted to them, and on the slightest suspicion of fault have uncomplainingly borne the anger of officials and the bullying of the police. Some mahajuns have become zemindars by purchasing estates at public sales, but the Government levy no charges upon the vast income obtained by mahajuns through money transactions and other resources. This, petitioners represent, is unfair; they think that the large profits money-lenders make with so little labour should be as heavily taxed for imperial and local purposes as the small profits it takes landholders so much toil to make by their lands.

Petitioners do not propose that Government should tax the wealth, income and profession of mahajuns. They simply desire to draw a comparison between their position and that of the mahajuns, with the view of showing that they are deserving of consideration on the part of Government.

When the Income Tax Act became law, and again on its re-enactment, the mahajuns tried by every means to avoid the tax, submitting false returns of their income and profits, although they should not have felt the slightest inconvenience in paying the tax on their true profits, as they actually used to demand and receive the tax from the debtors.

Petitioners here again complain of the fact that, while the mahajuns, a rich class of people, flourish and prosper, they (zemindars in embarrassed circumstances) are ruined and beggared by the operation of Act XXVIII. of 1855. Hence on this ground also they think it but just that the Act should be repealed.

5thly.—Since the passing of the Act, the 2nd, 3rd, and 4th classes of mahajuns, by making extortionary demands as mentioned above, have ruined and impoverished the zemindars, who are indebted to them to such a degree that for want of means they are debarred from taking legal proceedings to establish their just claims. To avoid prolixity the petitioners have refrained from entering into further particulars, and they pray that the operation of Act XXVIII. of 1855, the source of so many evils to zemindars, be discontinued, and that an Act to provide for the reduced rate of interest be substituted as early as possible.

The petitioners have been constrained by imperative necessity to submit this petition, which they opine is fuller in its details than any

yet submitted on the subject, and hope His Excellency in Council will take it into his favourable consideration.

11. *The cruel effects of the process of sale on zemindaries (landed estates).*—Petitioners will now proceed to detail some of the hardships caused the sale of landed estate. Although the custom of the sale of landed estate has been in force a length of time, yet the practice has gone on increasing ever since the promulgation of the rule of 1846, and it is an unquestionable fact that shares in villages and zemindaries have been, and are being, sold at altogether inadequate rates, especially when purchased by decree-holders themselves. The decree-holders, when intending to purchase any such property, have all along, ever since the enforcement of Act XXXIV. of 1803 (which enabled them to increase their demand, though not to the extent feasible, under Act XXVIII. of 1855), devised plots and schemes to get the property sold at the cheapest price. There is no doubt of the fact that the debtors possessing proprietary rights in joint estates and village zemindaries have no voice in the settlement of the value of their property under sale, and consequently suffer a great loss therefrom; for the property under sale is sold below its market value, that is, at a less price than it would have fetched if sold by private contract (a statement of such market values will be hereafter supplied). The hardship of the rules of sale which permit of estates being disposed of for such inadequate prices is unquestionable; and were the powerlessness of the proprietors taken into consideration, the process of sale would either be altogether abolished, or only so much of the property as would suffice to satisfy the decree would be sold at the market value by private contract; the rest of the estate would be left for the maintenance of the judgment-debtor. The cruelty of the process of sale and of the sale of zemindaries below their value are so universally known that the people, relying on the justice of Government, are every year looking forward to the establishment of a Special Commissioner's Court to enquire whether estates are really sold in execution of decrees at inadequate prices, or for unfair and illegal demands by treachery and fraud, and to upset such sales: and rumours of the establishment of such court are constantly abroad. Petitioners feel sure that it will be of immense benefit to the class of zemindars if such a court is established.

12. The present Government has shown itself solicitous that its subjects should have the means of subsistence, and therefore, under special or altered rules, many things, such as pensions, maintenance allowances, and certain grants, being considered unsaleable, have been exempted from sale, the object being not to deprive their possessors of the means of support. But the class of property, which is the means of support of zemindars, has not been so protective; ancestral estates, &c., have all along been sold without reserving to the landlord any kind of rights or means of subsistence. Moreover, zemindars are deprived of the right of cultivating the lands so sold, and are not allowed to

till the ground without the permission of the purchaser; besides which things on the land not forming part of the villages, joint estate, or estate at the time of sale, which may be included therein, then become the property of the purchaser. Gardens and their produce, and all rates and cesses levied by the landholder also pass to him without further payment, the only things taken into consideration in fixing the value of estates put up to auction in execution of decrees being the value of the land and the Government demand thereon, whereas in private sales all the above sources of income are taken into account. Valuable estates are thus often purchased very cheap by these cruel, tyrannical persons, who already in easy and comfortable circumstances are incapable of appreciating the status of landed property.

Petitioners, therefore, represent that, if the rules relating to public sales are not speedily modified by the legislature, thousands of zemindars, who are sunk in debt, will be ruined. They further represent that since the last two years and a half, *i. e.*, since the enhancement of Government revenue in certain pergunnahs, the zemindaries have so greatly decreased in value that intending purchasers are holding back, and the mahajuns, especially of classes 2nd, 3rd and 4th, taking advantage of the opportunity, have increased their demands, and by obtaining decrees purchased the estates themselves, or got others to purchase them, at the very lowest prices. Many of the mahajuns having come to an understanding among themselves have, with a view to render their debtors entirely helpless, deferred granting any further loan, and lately the revenue authorities have had to postpone sales for want of bidders, none but decree-holders or others (their agents?) purchasing when a favourable opportunity occurs.

Petitioners say that this is a trying moment to the zemindars, who receive no mercy at the hand of the mahajuns.

Petitioners, therefore, think it a duty binding on Government to interfere and allow payments to be made to mahajuns by instalments, without interest, or with interest at a reduced rate.

They submit that this interference on the part of Government cannot be at variance with justice and the provisions of Sections 194 and 244 of Act, 1859 (Code of Civil Procedure), specially when money-lenders have all along proved themselves to be extortionate in their demands, so much so that their claims often amount to more than the sum total borrowed, though more than double the amount may already have been received by them.

13. It is an admitted fact that the practice of sale by auction did not exist during the reign of former rulers of the land; and as to the Buy-i-Sultani (State sales), the rules upon which such sales were founded were not so stringent and severe, and were very seldom, if ever, carried into effect.

Petitioners fancy that these rules are framed on three principles—

1*stly*, to prevent delay in the recovery of loans;

2ndly, to give effect to the decrees of court in the interest of decree-holders;

3rdly, to promote money-dealings.

Petitioners do not dispute those principles; but if they are right in their conjecture, they complain of the evils accruing from those rules especially to ancestral estates. They feel sure that, if these rules were superseded by others framed on the very same principles, the people will thereby be greatly benefited. With regard to the first principle, they say that, were the public sale of landed estates abolished, it would not be impossible to devise some other mode by which the court could assist decree-holders in recovering the amount of their claims. When such sales result in the ruin of debtors, petitioners think it is not justifiable on the part of Government to hasten a sale to prevent delay in the recovery of claims—a delay to which mahajuns and money-lenders have no objection; in fact they, with the view of keeping their business going, do not care to cover their claims more speedily. The sales of zemindaries are owing not to the carelessness and negligence of debtors or the desire of mahajuns for speedy payment, but to the covetousness of money-lenders in the following cases, viz.:

(1) when a debtor becomes quite tired of paying extra and additional charges, eventually gets angry and gives the mahajun trouble;

(2) when a creditor institutes a suit with the object of denying previous payments made to him, and the debtor defends the suit, or offends him in some other way;

(3) when a person desirous of himself purchasing his land, or when an adversary seeking his ruin, induces the landholder to borrow money of him with the intention of bringing the estate to the hammer;

(4) when the decree-holder himself wishes to purchase a property cheap.

In all the above cases the money-lender can have no hope of further money transactions with his debtor; therefore he prefers delay which keeps his business going and brings him large profits in the shape of interest, &c. It may be asked why, if money-lenders prefer to let their loans run on, they have recourse to the process of sale. To this petitioners reply that, as shown above, they derive advantages from such process, quite foreign to the bond or to the intention of the court, issuing the decree of sale.

With regard to the second principle, petitioners represent that, in giving effect to the decisions of the courts, it would be unjust on the part of Government to deal according to the wishes of certain classes in a manner (the sale of lands for instance) detrimental to the interest

of the masses. They do not suggest that the rules relating to public sale be so altered as to affect or impair the decisions of courts, but, on the contrary, they wish that the decisions of courts may be productive of results beneficial to the interest of the people, or, in other words, they wish that debts be liquidated without recourse being had to the sale of estates.

With regard to the third principle, petitioners opine that the rules relating to public sale, instead of promoting money transactions, may tend to its jury for the following reasons:

1stly.—Because zemindaries under sale are generally purchased by persons in affluent circumstances, who seldom find themselves under the necessity of borrowing money, and when they do borrow, it is with the promise of liquidating the debt soon; whereas if the said zemindary had remained in possession of its ancient owner (without the fear of sale), he would have time after time borrowed money upon its security, would have been prosecuted, and have discharged his debt by instalments. Hence it would appear that money transactions suffer by zemindaries under sale being purchased by such rich persons.

2ndly.—The usurious demands of mahajuns, and the fear of the sale of their property, and of the high interest now permitted to be charged, deter people from borrowing, though it is impossible that the business of money-lending should altogether cease. It is quite certain that, with the exception of old debtors, who are quite helpless, men now seldom dare borrow money.

3rdly.—That business only flourishes in which the interests of the contracting parties are equally protected. For instance, debtors do not hesitate to borrow money from those money-lenders who advance loans on moderate interest without severe conditions, nor do they find much difficulty in liquidating their debts; and were all mahajuns to act in the same way, there would neither be occasion for the public sale of property nor for the accumulation of debts. Petitioners think this object may be attained by discontinuing the rule relating to public sale and reducing the rate of interest.

14. Petitioners in further proof of the evils attending the practice of the public sale of estates, state that for some years after the fifth settlement, and up to the year previous to the present settlement, the value of zemindaries was reckoned on a rate of miti ranging from a minimum of 3½ annas to a maximum of 5 annas, the average rate being from 4 to 5 annas, and shares in land and village zemindaries were sold at a price computed on a miti of 4 or 5 and sometimes 6 annas, and even upwards in case of a rebellious tenant, or when the seller and purchaser lived at a distance, or the property was situated in several mouzahs, or the purchasers were found incapable.

The miti reckoning is thus: One full year's profit at a miti of 3½ annas per cent. per month amounts to Rs. 2-10; for instance, Rs. 500 will be the value of an 11-rupee share calculated on a miti of 3½ annas, of a 12-rupee share on a miti of 4 annas, of a 12-rupee 12-anna share on a miti of 5 annas, and of an 18-rupee share on a miti of 6 annas, and so on. Village zemindaries have been sold at these four rates, the average rate of miti being 4 annas and 10 pie. Petitioners, in submitting proof of the above rates, will show that very valuable zemindaries are being sold at low prices.

Proof 1st.—Many bills of sale of two or three years back date are now in the possession of purchasers in the zillah in which the petitioners live, and in registry offices. They are available when called for.

Proof 2nd.—The price paid by Government for land taken for public purposes.

Proof 3rd.—The amount of monthly or yearly profit on Government promissory notes support petitioners' argument. The amount of compensation and of monthly or yearly profit on Government promissory notes are nearly equal to the average miti on which the valuation of shares and village zemindaries mentioned as above is based. The difference is that in the case of bank notes the interest is obtainable on demand, and there is no other source of gain; whereas in the case of shares in villages and zemindaries, although the miti is less than the profit on bank notes, yet there are other sources of gain, such as forced labour and manorial cesses; and although in cases relating to compensation the zemindars and panchayets, being subjects of Government, dispute not much about the amount, and mostly sign acknowledgments for the same without hesitation, yet the rate of compensation is nearly equal to, and sometimes less than, the average rate mentioned above. But in cases of sale by auction regard is neither had to the customary rate of profit, high or low, nor to the rate of interest on Government promissory notes; and consequently estates have been bought for very low prices, and are now being bought cheaper still. In former, as well as recent, public sales, shares in villages have been sold at the minimum rate of 12 annas, and at the maximum rate of one rupee and four annas, and sometimes estates worth eight to nine thousand rupees are allowed to go for as low a price as two, three, or four hundred rupees. It would be difficult for petitioners to state in detail how shares and village zemindaries have been sold by fraud or other unfair means, though, were a special court appointed as proposed, every thing connected with such sales would be easily ascertained. The causes and evils which formerly occasioned the appointment of a special commission are still in existence, with this difference that, before the appointment of the said special commission, persons had by fraud and oppression caused bills of sale of rights and interests in zemindaries to be executed in their favour by the proprietors, and continued so to do after the year 1846, with the view of bringing such estates to the hammer. If the mutiny of 1857 had not broken out and caused the destruction of the records, or if the purchasers of zemindaries in public sales through fear of being

prosecuted by the dispossessed zemindars had not accused the latter of rebellion, or if the dispossessed landlords had not been ruined by debt or other causes, thousands of suits would have been instituted before the passing of Acts VIII. and XIV. of 1859, because many public sales had been set aside by the zillah and late Sudder Court on those very grounds.

Petitioners therefore represent that as the value of estates is founded on a fixed and well-ascertained basis as shown above, their sale by auction at such low values bears very hard on and ruins the old proprietors, while it enriches the mahajuns. Old zemindars attach so much value to, and have such love for, their zemindaries as the means of their maintenance and place of residence, that they do not hesitate to pay high interests and other exorbitant charges to the mahajuns, bear the hectoring of police and collectorate officials, and suffer sundry other inconveniences and hardships, and sink their dignity for the safety of their ancestral estates.

Petitioners have a confident hope that their prayer will be heard, and their wrongs and grievances speedily redressed by Government by the repeal of the existing laws and regulations relating to high rates of interests and public sales.

Petitioners as well as other zemindars are now in great trouble, as the mahajuns hearing of the enhancement of the Government revenue in certrin pergunnahs under the new stttlement have, since the last two years and a half, ceased to lend out money to zemindars (as stated in paragraph 12), taken legal proceedings against them, and caused their zemindaries to be sold by public auction in execution of decrees at the lowest prices.

Petitioners therefore pray that till the new rules relating to the reduction of the rate of interest are introduced, and those relating to public sales abolished, the Government will be pleased to direct the courts to allow payment to be made by instalments without or with interest at a reduced rate (according to the circumstances of the case) under Sections 194 and 244 of Act VIII. of 1859 (Civil Code) in cases in which decrees remain unexecuted, or may hereafter be passed, and order that the sales of ancestral estates be suspended. Petitioners say that for several years public sales of estates were suspended in Oudh during the progress of the settlement, and they declare that if such a measure is not adopted, their ruin is inevitable.

15. Petitioners in this paragraph will proceed to mention the extent to which they think alterations in the laws and rules relating to interest and public sales are necessary.

They pray that the maximum rate of interest be fixed at 10 per cent. per annum in the case of contracts secured by bonds, mortgage-deeds, promissory notes, bills of exchange, or other assurances which may be executed after the passing of the proposed Act; that moneys decreed shall carry interest at the minimum rate of 4 annas per cent. per mensem, or shall be payable by instalments without interest as the

circumstances of the case demand ; that decreed moneys with or without interest be paid by a temporary surrender or lease of the property, and that the sale of ancestral estates and of all rights and interests therein, and of the residences of debtors and their dependants, whether ancestral or self-acquired, be discontinued, but that all other movable or immovable property belonging to the party against whom the decree is issued be sold by auction at its market value in the usual manner.

Reasons for the repeal of the existing rules relating to public sales.

16. (I.)—Under the stringency of the rules relating to public sale, villages and estates of considerable value have been generally sold at the cheapest prices, and zemindars of high social position have been and are being ruined.

(II.)—If a rich person purchases a portion of a joint ancestral property, he tries various means to get possession of the remaining portions, whether the property of the debtor or of others; and although the right of pre-emption is allowed in public sales, yet the sharers can generally not avail themselves of it from want of pecuniary means.

(III.)—Should one of the co-sharers raise a loan and purchase the share, this very circumstance eventually leads to the diminution of his property.

(IV.)—The purchase of such share by a co-sharer without the consent of the owner is injurious to the latter, as ill-feeling always exists among co-sharers, or would certainly follow such a transaction.

(V.)—Public sale injures the peace and comfort of the people which it is the main object of Government to maintain.

(VI.)—When deprived of their property by sale, debtors are generally too old, and their sons too young, to procure employment. In such cases the debtor becomes utterly destitute of every means of subsistence, and when a debtor dies, leaving a family of minor sons and daughters behind him, hard indeed is their state of utter destitution.

(VII.)—The value of zemindaries has sunk to zero, for as the debtors have not the least power to demand the fair market price in public sale, so intending purchasers, knowing they can buy so much more cheaply at auction, will not purchase privately.

(VIII.)—Some few mahajuns of class 2nd and those of classes 3rd and 4th generally trusting to the practice of public sales charge exorbitant rates of interest, and by unfair means and extortionate charges increase the amount of their claim beyond all bounds.

Mahajuns of classes 3rd and 4th especially are extremely extortionary and unmerciful in their demands on debtors of class 2nd, whom they inveigle and persuade to borrow money chiefly for sinful purposes.

Public sale is the root of all these evils.

(IX.)—Mahajuns and money-lenders as a class are very rich and opulent; their business is in no way dependent on the sale of lands in execution of decrees, for the recovery of decreed monies is possible in the way shown in paragraph 15, or in such other manner as His Excellency in Council may think fit to adopt.

(X.)—The Government revenue having been enhanced, the income of the zemindar has, through no fault of his, necessarily decreased in the same ratio; petitioners therefore pray that, to protect their estates (the means of their livelihood), Government will be pleased to put a stop to the public sale of estates, and to make debts recoverable by instalments only.

(XI.)—By the proclamation of Her Majesty the Queen in the year 1858, and by the orders from time to time issued by Government, the petitioners and other zemindars had been led to expect that their estates would be protected by Government, as it was evidently with this intent that Sections 194 and 244 of the Code of Civil Procedure, which empower the court to allow payments to be made by instalments with or without interest, were framed. On this ground also petitioners submit that their petition is reasonable and worthy of favourable consideration.

Petitioners have confidence in the wisdom and administrative abilities of His Excellency and the Members of His Legislative Council, which are universally acknowledged, and would not presume to suggest the adoption of any special measure, still, as they are in extremely embarrassed circumstances, and every person in distress and danger may rightly declare what seems to him the best means of escape and salvation, they humbly and most respectfully beg to enclose a draft Bill, with the earnest prayer that, after the necessary alterations and amendments, it may be approved of and adopted by His Excellency in Council.

SHAIKH MAHOMED RAZA-OODDEEN,

AND OTHERS,

The 19th February 1872. *Zemindars, Zillah Allahabad.*

BILL OF 1872.

A Bill to limit the rate of interest in the Presidency of Bengal, and to provide for the recovery of decreed money by instalments, or by the assignment, lease or farm of real property, and in abrogation of the sale of such estates by public auction.

WHEREAS it is expedient to limit the rate of interest and to provide for the recovery of decreed monies without the sale of zemindaries and other ancestral immovable properties and family residences in those zillahs and villages in the Presidency of Bengal in which Act XXVIII. of 1855 relating to usury laws is now in force; and whereas

it is expedient to extend the operation of Section 194 of Act VIII. of 1859, it is enacted as follows:

I.—So much of Act XXVIII. of 1855, and those sections of Acts VIII. of 1859 and XXIII. of 1861, relating to execution of decrees, as authorize the public sale of any kind of property, and impose interest from the date of decree, are hereby repealed, so far as they may be inconsistent with the provisions of this Act.

II.—From the date of the passing of this Act, notwithstanding anything contained to the contrary in any previous Act, its provisions shall be binding on every class of tradesmen, mahajuns, money-lenders and on every court.

III.—This Act may be called "An Act to provide for the recovery of monies decreed by Civil Courts".

IV.—The provisions of this Act shall remain in force until amended or repealed by any subsequent Act.

V.—On every bond, mortgage-deed, "bay-bil-wafa", security, promissory note, oral agreement, or any other assurance not mentioned in this Act, which shall be entered into, and after the passing of this Act, the rate of interest shall be fixed at 10 Rupees per cent. per annum.

VI.—Mahajuns, creditors, or money-lenders, who lend money on interest under written agreement as mentioned aforesaid, shall not be authorized to receive interest over and above the rate limited by this Act, nor to impose any conditions inconsistent with the said rate.

VII.—(*Clause* 1.)—After the passing of this Act, if in any such deed or bond as aforesaid the interest mentioned is at a higher rate than the limit fixed by this Act, the person who would have been entitled to interest if the rate had been fixed according to this Act, shall forfeit his right to the whole amount of interest.

(*Clause* 2.)—If in any deed or bond mentioned in Section 5 of this Act, the rate of interest is fixed below the rate prescribed by this Act, the rate mentioned in such deed or bond shall continue till the institution of the suit.

(*Clause* 3.)—If in any deed or bond mentioned in Section 5 of this Act, no rate of interest is fixed, and if it shall appear that the contract is not without interest, the court shall allow interest at the rate which shall appear just and proper, provided always that in any case the rate of interest shall not exceed the limit fixed by this Act.

(*Clause* 4.)—If any deed or bond mentioned in Section 5 of this Act contain an agreement that no interest is to be charged, the court shall have no power to determine contrary to the terms of such agreement.

(*Clause* 5.)—In any deed or bond mentioned in Section 5 of this Act, interest shall be allowed for 12 months according to the British calendar months and not for the 13th or intercalary month according to the Fuslee year, and no document shall contain the latter condition.

VIII.—From and after the passing of this Act, the rate of interest on any deed or bond mentioned in Section 5 executed previous to the passing of this Act, shall be the rate limited by this Act, the stipulations of the said deed or bond to the contrary notwithstanding.

Rules regulating the award of interest on amounts decreed and on costs in regular suits.

IX.—(*Clause* 1.)—If the defendant in his confession of judgment does not acknowledge his liability to pay interest at the highest rate allowed by this Act, the court shall (whether the case be defended or decreed *ex-parte*) allow interest at the rate of 6 per cent. per annum, from the date of the institution of the suit on the whole amount of principal mentioned in the bond, and from the date of the decree on the costs.

(*Clause* 2.)—If judgment is given against a defendant on the whole or a portion of the amount claimed, interest on the whole or any portion of the amount decreed, and on costs, shall be allowed at the rate mentioned in the preceding section.

(*Clause* 3.)—If it appear from the evidence of the defendant that the amount claimed under any deed or agreement of the kind mentioned in Section 5 of this Act (whether executed before or after the passing of this Act) is a part of the principal money with interest or costs formerly decreed, but still unrecovered from defendant, the court shall, in that case, ascertain the actual original amount of the debt, and the sum or sums paid by the defendant, and proceed as follows, namely:

If it is proved or ascertained that an amount equal to the actual amount of the original debt has been paid by the defendant previous to, or after the execution of, the deed or bond upon which the suit is instituted, and that the amount claimed under such deed or bond is either less than, or equal to, the actual amount of the original debt, the court shall allow interest on the actual amount of unpaid portion of the original debt, and on the actual amount of legal costs, at a rate not exceeding 6 Rupees per cent. per annum.

If it is proved that the defendant has already paid double the actual amount of the original debt, and that an amount equal to that of the original debt is unpaid, the court shall allow interest only on the actual amount or unpaid portion of the original debt, and on the actual amount of costs justly incurred, at the rate of 3 rupees 3 annas per cent. per annum.

If it is proved that the plaintiff has already received more than double the actual amount of the original debt, and that the sum claimed is a little more or less than double the actual amount of the original debt, the court shall allow interest on the actual legal costs only,

at the rate of Rs. 6 per cent. per annum. If the debtor has not paid any portion of interest or principal, and the claim is for the original debt with interest, the rate of interest charged shall be taken into consideration and a decree issued in consonance with the rules above laid down.

Any party who is dissatisfied with any decision passed under this Act may appeal to the higher court.

Rules for granting time and for allowing payment by instalments in regular suits for the recovery of debts.

X.—If under any deed or bond mentioned in Section 5 of this Act upon which a claim is based, a zemindary or other immovable property, not ancestral, but self-acquired, is mortgaged, and the defendant applies for time to enable him to satisfy the decree, the court shall grant him such time, not exceeding one year according to the British calendar, on the condition that, if the decree is not satisfied within the said period, the amount shall be recovered by the sale of the property mortgaged.

(*Clause* 1.)—If any immoveable property is not mortgaged under any deed or bond mentioned in Section 5 upon which a claim is based, and the attachment of any immovable property (not ancestral) has not taken place before the suit is decided, the court may, on the application of the defendant, and on good security for the payment of the whole sum being given, grant him a sufficient amount of time.

(*Clause* 2.)—Omitted in the original.

(*Clause* 3.)—With the exception of cases based on any deed or bond mentioned in Section 5, under which zemindaries (either ancestral or self-acquired) are mortgaged, in every suit relating to debts security shall be required when time is given or when payment by instalment is allowed. In the cases excepted above, time may be given and payments may be allowed by instalments without security.

(*Clause* 4.)—If the immovable property upon which a claim is based is partly ancestral and partly self-acquired, and is mortgaged under any deed or bond mentioned in Section 5, or has been attached before the case is decided, the court shall issue process according to the rules relating to the two classes of property, first against the self-acquired property as above directed, and then against the ancestral property in the manner hereinafter mentioned.

(*Clause* 5.)—If ancestral and non-ancestral property belonging to different defendants to a suit be mortgaged or pledged under any deed or bond mentioned in Section 5 on which such suit is founded, or if, before the case is decided, such property be attached by order of the court, and it appear that the whole of the defendants are jointly responsible for the debt, the court shall decide the amount of responsibility of each individual debtor, and proceed according to the rules relating to the above two species of property.

(*Clause* 6.)—If in any case based on any deed or bond mentioned in Section 5 of this Act there are two or more (defendants), one or several of whom have stood security for the others in the execution of such deed or bond, but the fact is not expressed in such deed or bond, the court shall fully consider the objections, and, if proved, shall make a distinction between the actual debtors and those persons who stood as securities; if the zemindary (not ancestral) of the security or securities and the hereditary zemindary of the debtor or debtors are mortgaged, or attached before the determination of the case, the court shall direct that the decreed money be recovered under the rules mentioned in this Act, first from the zemindary of the principal debtors, in case the money is not recovered from the aforesaid property, then the zemindary (not hereditary) of the security or securities.

If the zemindary (not hereditary) of the principal debtors (defendants) and the ancestral zemindary of the security or securities are mortgaged under any deed or bond, or attached before the termination of the suit, the money decreed shall be recovered first from the ancestral zemindary of the principal debtors (defendants) under the rules and in the manner mentioned in this Act; provided that until the decreed money is paid in full, the zemindary of the security or securities shall not be deemed, under any circumstance, as freed from all liabilities.

An appeal may be instituted from any order or decision under this and the preceding clause.

(*Clause* 7.)—Where in a suit based on any deed or bond mentioned in Section 5 the mortgaged villages, shares, and zemindaries are situated in different zillahs, under the jurisdiction of one or more High Courts, the court shall deal with such portion of the viliage, share, or zemindary (not ancestral) as may lie within its jurisdiction, in the manner and according to the rules prescribed by this Act. If such portion of the village, share, or zemindary is ancestral, the court shall order that the money decreed be paid in part by instalments, according to the rules relating to ancestral estates, out of the income of such portion of the village, share, or zemindary, as lie within its jurisdiction, and shall, in regard to the remainder, grant a certificate under Act VIII. of 1859 (Civil Code), under which the decree-holders may recover the amount from the village, share, or zemindary situated within the jurisdiction of any other court.

XI.—If a suit is instituted for the recovery of money lent upon any deed or bond mentioned in Section 5, under which hereditary estates, together with dwelling houses and appurtenances belonging to a debtor, are mortgaged as security, the court, whether such deed or bond was executed before or after the passing of this Act, shall, if an application is made by, or on behalf of, the defendant for an order for payment by instalments, call on the said defendant to submit a correct account of the income arising from his property, zemindary, &c. The said account shall, on presentation, be duly verified by the evidence of the defendant and parties interested in the property, and of the Karindah, if there be one, and the amount of rent derivable from buildings on the estate

other than petitioners' or his defendants' dwelling-houses shall also be enquired into.

XII.—(*Clause* 1.)—On the verification of the above account, if the court is satisfied that it is out of the immediate power of the defendant to satisfy the decree, that his personal estate is insufficient for the purpose, and that there is no non-ancestral zemindary or other property saleable, the court shall divide the whole amount of the defendant's income into three or four portions, and, setting one-third or fourth aside for his maintenance, shall order the decreed money to be recovered from the remaining two-thirds or three-fourths by instalments, with or without, or at a reduced rate of interest, to run until the whole amount is liquidated, under Section 194 of Act VIII. of 1859, or under Section 9 of this Act (as the case may be).

(*Clause* 2.)—The court may take into consideration the nature of the zemindary and the various ways in which the rent is collected, and order that the instalments be paid in two sums, or in one sum, at the end of the month of Jeith; in this manner the interest and convenience of the judgment-debtor will be better consulted, rents of houses, however, should be made over monthly, or as may be otherwise directed.

(*Clause* 3.)—When payment by instalments has been decreed, the court shall direct the putwary to collect the rent, and shall issue a notification to all the cultivators to the effect that, until the demand is wholly satisfied, they shall pay the rent to the putwary and not to the zemindar or his agent, failing which they will have to pay thier rent over again. The collecting putwary shall cause the signature of the zemindar to be affixed to his account of collections, and shall deliver a copy of it under his own hand to the defendant. The putwary shall himself deposit the amount of each instalment in court, receiving an acknowledgment which he shall hand over to the defendant. Information of the above arrangement shall be given by the court to the Collector, so that he may not object to the putwary's being so employed.

(*Clause* 4.)—If the putwary sues or is sued in respect to the collection of rents or any other matter, the court shall adjudicate the case. Save in the matter of collecting the rents the judgment-debtor shall retain all his rights and powers relating to the management of his estate.

(*Clause* 5.)—If it appears that owing to the heavy charge for interest the amount of the demand has so enormously increased that the two-thirds or three-fourths of the income which remain after making a provision for the debtor are insufficient to satisfy the amount of the decree with interest or with a reduced rate of interest mentioned in Clauses 1 and 2 of Section 9, instalments without interest shall be decreed, whether the bond on which the suit is based be for the original debt or for the whole balance of a debt as mentioned in Section 9 of this Act, or whether such deed or bond was executed before or after the passing of this Act.

(*Clause* 6.)—When the income derivable from lands under the above arrangement falls and rises, the amount of the instalment shall rise and fall in the same ratio, in such case the order of the court shall, as to the date of payment of the last instalment, not be strictly adhered to, such date being considered only as the approximate date.

Rules to provide for the discontinuance of public sales of certain estates, the sale of other property, and the payment of decrees by instalments, and by a temporary transfer of property.

XIII.—From the date on which this Bill shall be published in the *Gazette*, no order shall be issued for the public sale of ancestral zemindaries and dwelling houses of the defendants and their dependants.

On and after the passing of this Act, all ancestral joint property villages, zemindaries, and dwelling houses of defendants shall be exempted from public sale in execution of decrees of civil and revenue courts, whether such decree issued upon any deed or bond mentioned in Section 5 entered into before or after the promulgation of this Act, or whether such decrees are dated before or after this Act is published in the *Gazette*.

XIV.—When any ancestral joint property, or village, or zemindary is mortgaged or pledged, or under the attachment in execution of a decree, or prior to the decision of the case, the judgment-debtor may, by petition, apply to the court to order payment by instalments with or (reasons being given) without interest.

The court shall thereupon file the application in the miscellaneous list relating to the execution of decrees, and shall proceed under Section 11 and deal with the case according to Section 12 of this Act, and decree payment by instalments with or without interest. This provision applies to all the decrees mentioned in the foregoing section.

XV.—If under the circumstances of the case it appear proper, and the decree-holders agree thereto, at least one-fourth or at most one-third of the ancestral joint estate or zemindary shall be set apart for the maintenance of the defendant (judgment-debtor), and three-fourths or two-thirds of such property shall be let out on lease or mortgaged, by way of temporary transfer, to the decree-holders. The court shall fix a period which will be sufficient to enable the judgment-debtor to satisfy his demand with, or without interest, as the case may be, and within which the decree-holder shall retain possession of such property to recover the decree-money. On the expiration of the said period, he shall immediately give up possession of the same.

XVI.—With the consent, or at the request of the decree-holder, the court shall examine the judgment-debtor and putwary, and shall with the consent of the judgment-debtor, or unless he show to the court's satisfaction that he will be injuriously affected thereby, order the estate to be temporarily transferred or leased out, and shall put the decree-holder in possession of it in the manner usually observed in such cases. The

decree-holder or decree-holders shall have to submit an argreement according to the form (A) and the judgment-debtor according to the form (B). In both cases the court shall forward a report of the case to the Collector and direct him to enter the name of the decree-holder in the Collector's register as mortgagee or manager of such property for the term to be mentioned in the report, and the Collector shall act accordingly.

XVII.—(*Clause* 1.)—On the expiration of the term of transfer, the decree-holder shall immediately give up possession, and inform the court of the fact; but if he fails to do so, the judgment debtor shall apply to the court to dispossess such decree-holder. The court shall thereupon without hearing any objection send an instruction to the Collector to remove the name of such decree-holder from the column of mortgagees or managers, and the Collector shall forthwith proceed to do so.

(*Clause* 2.)—The provisions of the sections hereinbefore or hereinafter mentioned shall apply to every decree issued before the passing of this Act, in which contrary arrangements have been or like arrangements have been not made.

XVIII.—If there are several decree-holders preference shall be given to the claims of the first decree-holder, provided that the zemindary was pledged under the deed on which his claim was founded, and that the said deed was duly registered. The priority of claim shall be decided by the court.

XIX.—The decree-holder to whom any such joint property, or village, or zemindary is transferred shall not, during the term of his occupancy, advance any money to the judgment-debtor.

XX.—(*Clause* 1.)—In every case, and in satisfaction of all decrees of court, non-ancestral zemindary or other immovable property (not being the dwelling-house of the debtor of his dependants) shall be liable to sale, and all movable property of the debtor, whether ancestral or not, and even the right to the ancestral property under mortgage, shall also be liable to sale.

(*Clause* 2.)—No property movable or immovable shall be liable to public sale which has been exempted therefrom by any former Act.

(*Clause* 3.)—On application for the sale of any joint property, or village, or zemindary liable to sale, the court shall, in the presence of the decree-holder and the judgment-debtor, ascertain the profits and income accruing from such property, and if the property consists of houses, lands, gardens, trees, &c., the court shall take into consideration the quality and value of such property, and then determine the fair market price of the same.

With regard to landed property, the court shall, taking into consideration the amount of the decreed money, fix the price on a miti of

five annas (*i. e.*), a price that will yield a profit of Rs. 4-12 per cent. per annum. In the case of any other movable or immovable property, the sale shall be allowed to take place at an upset price, and the sale shall be held invalid if such property is sold at a less price. But if no bidder comes forward for the property at the upset price, it may, in such a case, be knocked down in the name of the decree-holder at a less price.

(*Clause* 4.)—An appeal may lie against the orders passed in cases relating to interest, amount of profits, and sales of joint property, village and zemindaries.

XXI.—If the interest and rights in any property have been wholly, or partly, transferred, with or without consideration by a paternal great-grand-father or paternal great-grand-mother, to his or her great-grand-son or great-grand-daughter; or by a maternal great-grand-father, or maternal great-grand-mother to his or her great-grand-son or great-grand-daughter; or by a paternal grand-father or paternal grand-mother to his or her grand-son or grand-daughter; or by a maternal grand-father or maternal grand-mother to his or her grand-son or grand-daughter; or by a father or mother to his or her son or daughter; or by a husband to his wife, or *vice versâ*; or if such persons respectively have had the names of their said relatives entered in the Collector's register, whether the property is transferred to the name of a person who had no hereditary rights thereto or not, such transfer shall be deemed a transfer of hereditary, and not of self-acquired and non-hereditary property.

E. ST. GEORGE,

Asst. Secy. to the Govt. of India,

Legislative Dept.

No. 2066 A, dated Nynee Tal, the 24th September 1873.

From—C. A. ELLIOTT, Esq., Secretary to the Government of the North-Western Provinces.

To—The Secretary to the Government of India, Home Dept.

I AM directed to forward, for the information of His Excellency the Governor General in Council, a copy of the correspondence noted on the margin relating to the sale of landed property in execution of decrees of the civil courts.

Petition from Futteh and Ram Sookh, dated 7th January 1873.
Endorsement No. 499 A, dated 6th March 1873.
Reply from Commissioner of Meerut No. 42, dated 2nd May 1873.
To the Board of Revenue No. 1173 A, dated 6th June 1873.
From the Board of Revenue No. 681, dated 2nd July 1873, and enclosures.
To the High Court No. 1522 A, dated 21st July 1873.
Reply No. 1476, dated 6th August 1873.
To the Honourable J. Inglis No. 2065 A of this day's date.

Revenue Department No. 144.

Petition from Futteh *and* Ram Sookh, *residents of Mouzah Bindoo Khuruck, Pergunnah Bhugwanpore, Zillah Saharunpore,—dated the 7th January* 1873.

Complain that their share, measuring 114 kutcha beegahs of land, situate in the aforesaid village, was sold at auction in 1869 in execution of a civil court's decree, amounting to Rs. 35, and purchased by Durya Sewak, Brahmin, the decree-holder, resident of Banseepoor, Zillah Saharunpore, for Rs. 35. Express their willingness to pay the said amount to the decree-holder, and pray for reversal of the sale complained of.

No. 499 A, dated Allahabad, the 6th March 1873.

Endorsed by the Govt., N. W. Provinces, Revenue Dept.

Forwarded in original (to be returned) to the Commissioner of Meerut, with the request that the Collector may be instructed to institute inquiries as to the low price for which the estate was sold.

Memorandum No. 42, dated the 2nd May 1873.

[*Petition from* Futteh *and* Ram Sookh, *of Mouzah Bindoo Khuruck, Pergunnah Bhugwanpore, Zillah Saharunpore.*]

In reply to No. 499 A, dated 6th March last, forwards for information a copy of Collector's docket No. 159, dated 22nd ultimo, reporting on the above. Returns original petition.

F. M. LIND,
Commissioner, Meerut Division.

To the Government of the North-Western Provinces.

Memorandum No. 159, dated the 22nd April 1873.

In reply to Commissioner's No. 68, dated 12th March, states that the property in question amounting to 38 beegahs eight biswas was sold apparently at so low a price, because on the day of sale no one bid for the property except the decree-holder.

2. The property has since been sold by the decree-holder to Nuthoo Pudhan, of Landhoura.

3. The undersigned has already reported demi-officially on this case to His Honor the Lieutenant-Governor.

E. G. JENKINSON,
Collector of Saharunpore.

To the Commissioner of the Meerut Division.

No. 1173 A, dated Nynee Tal, the 6th June 1873.

Endorsed by the Govt., N. W. Provinces, Revenue Dept.

Copy, with enclosures in original (to be returned), forwarded to the Officiating Secretary to Board of Revenue, with the request that the Board will report whether any way occurs to them of preventing sales of land at such inadequate prices.

Copy of a Note by the Senior Member of the Board on the subject is sent herewith.

No. 681, dated Allahabad, the 2nd July 1873.

From—E. C. Buck, Esq., Officiating Secretary to the Board of Revenue, North-Western Provinces.

To—The Secretary to the Government of the North-Western Provinces.

Present:
The Honourable J. F. D. Inglis, c. s. i., and H. S. Reid, Esq.

I am directed to acknowledge the receipt of the orders of Government No. 1173 A, dated the 6th of June 1873, in the Revenue Department, with its enclosures, requesting the Board to report whether any way occurs to them of preventing the sales of land in execution of decrees at prices much below their value.

2. In reply, I am to state that the views of the Board are expressed in the Note drawn up by the Senior Member in the case of Mouzah Bindoo Khuruck, a copy of which is herewith submitted. The Board are not at present prepared to make any further suggestions.

Copy of a Note by the Senior Member of the Board of Revenue, North-Western Provinces,—dated 26th May 1873.

This is an instance of the injustice frequently caused by the blind mechanical way in which sales of land in execution of decrees of the civil courts are now conducted, owing, I believe, in a great measure to the practice which has gradually sprung up of making these sales over to the uncovenanted Deputy Collectors.

I do not know that this practice has ever been sanctioned by Government, and I am inclined to think that it is illegal.

Section 248, Act VIII. of 1859, provides that "if the property to be sold shall be land paying revenue to Government, and the Government shall so direct, the sale shall be conducted by the Collector", that is, the land shall be sold by the Collector, and not by an officer of the civil court.

The words "the Collector", in Section 246, Act. VIII. of 1859, mean, I think, the Collector of the District.

They have this meaning in Section 12, Act I. of 1845,—"Sales shall ordinarily be made by the Collector, or other officer duly authorized by Government in that behalf".

I understand this section to mean that the sale must be conducted by the Collector, unless the Government has specially empowered some other officers to do so, not as giving the Collector power to make over the duty to any one of his deputies on his own authority.

The circulars issued by the High Court support this view.

The circular of 1862, in paragraph 1, directs that "sales of land shall be held by Collectors of land revenue"; and in paragraph 2 refers to the Collector or other officer to whom the duty may be committed.

Board's Circular, Part I., Page 425.

"The Collector" must here mean the Collector of land revenue: "the other officer", the officer duly authorized by Government under Section 12, Act I. of 1845; while the Circular of 1868, which cancels that of 1862, refers only to Collectors, and says nothing of "the other officer duly empowered". (G. O. No. 268, dated 9th August 1861, may throw light on this point.)

But whether I am right or not in thinking that the sale of land in execution of civil court decrees cannot lawfully be made over by the Collector of a District to one of his subordinates without the special sanction of Government, I am quite certain that the practice of entrusting this duty to the uncovenanted Deputy Collector is inexpedient, and ought to be stopped.

A Native Deputy Collector is afraid to exercise any discretion in the conduct of these sales. If he postpones the sale of a valuable estate to a later hour of the day, in the hope that more bidders may come to the auction, or if he brings forward the sale of any such estate before its proper turn, because the auction room may then be full of persons likely to bid, he lays himself open to the charge of having done this to serve his own ends, or those of some of his friends: his only safe course is to go on like a machine to begin exactly as the clock strikes 12, and to go through the list without varying the order of the lots, whether bidders have assembled or not. It is in this way that sales are now carried on.

I would suggest—

(1) That the duty of conducting these sales should rest with the Collector of the District, unless the Government shall have named one of his covenanted assistants for the duty.

(2) That the High Court be requested to modify paragraph 4 of their Circular of 1868, so as to allow some discretion to the Collector of the District, and to empower him to postpone the sale of an estate until the next sale-day, if he sees good reason for so doing.

(3) That a report of every day's sale be sent through the Commissioner to the Board, stating the price fixed for each lot, and its estimated value, and a detail of any known encumbrances. At present the Government hears of cases such as this, and the Allygurh case, only by accident. If these reports show that land continues to be knocked down for such absurdly inadequate prices, further measures must be adopted.

J. F. D. INGLIS,
Senior Member.

No. 1522 A, dated Nynee Tal, the 21st July 1873.

From—C. A. ELLIOTT, Esq., Secretary to the Government of the North-Western Provinces.

To—The Registrar, High Court of Judicature, North-Western Provinces.

Translation of a petition dated 7th January from Futteh and Ram Sookh, residents of Mouzah Khuruck in the Saharunpore District.
Collector's letter No. 159, dated 2nd April.
Note by Senior Member, Board of Revenue, dated 26th May 1873.

I AM directed to forward, for submission to the Honourable Judges of the Court, a copy of the papers noted on the margin relating to the sale of land in execution of decrees of civil courts, and to say that the Lieutenant-Governor will feel indebted if the Honourable Judges will favour His Honor with their views as to the suggestions made by the Senior Member of the Board.

No. 1476, dated Allahabad, the 6th August 1873.

From—W. TYRRELL, Esq., Registrar, High Court of Judicature, North-Western Provinces.

To—The Secretary to the Government of the North-Western Provinces.

I AM directed to acknowledge the receipt of your letter dated the 21st ultimo, No. 1522 A, in the Revenue Department, forwarding certain papers relating to the sale of landed property in execution of decrees of the civil courts, and requesting an expression of the Court's opinion on certain suggestions on the subject made by the Senior Member of the Board of Revenue.

2. In reply, I am desired to observe that the Court fully recognizes the fact that the sale of the property of judgment-debtors for inadequate prices is an evil of a very serious character, for which it is very desirable to seek an appropriate remedy.

3. It appears, however, not to be necessary or expedient to raise and discuss the question whether sales held by any person but the Collector of the District are illegal, until it be brought judicially before the Court.

4. It is, the Court presumes, competent to the Government to direct Collectors of districts to hold all sales themselves if it thinks fit to do so.

5. The Court is unable to concur altogether in the views expressed by Mr. Inglis, and does not consider it necessary to modify its circular order No. 10, dated 18th November 1867, in the manner proposed.

6. The Court objects to giving any discretionary power as regards the execution of decrees to any authority other than the Court executing the decree. The duty of the Collector in conducting sales is intended, the Court conceives, to be merely a mechanical one; and this being so, an uncovenanted Deputy Collector would probably prove to be as good an agent for conducting the sale as any other district official.

7. The interests of the judgment-creditor ought not to be postponed to those of the debtor by (perhaps repeated) postponements of a sale with a view to better price being fetched. The debtor should have avoided the suit by paying his debt when due, and from the date of the suit should have prepared himself to satisfy the decree either by selling some portion of the property himself, or by earning or otherwise raising the money required for the purpose. The Collector may also, if the Government think such a course desirable, exert himself to assist the debtor so as to avoid the necessity of the sale, and may take steps to give greater publicity to the sale and to secure the attendance of bidders.

No. 2065 A, dated Nynee Tal, the 24th September 1873.

From—C. A. ELLIOTT, Esq., Secretary to the Government of the North-Western Provinces.

To—The Honourable J. INGLIS, C. S. I., Member of the Legislative Council, Simla.

I AM directed to forward herewith a copy of the correspondence noted in the margin relating to the sale of landed property in execution of decrees of the civil courts.

G. O. No. 499 A, dated 6th March 1873.
Board's No. 681, dated 2nd July.
G. O. No. 1522 A, dated 21st July, to Registrar, High Court.
Registrar's No. 1476, dated 6th August 1873.

2. The Civil Procedure Code being now under revision, His Honor considers that the closing letter of the correspondence from the Registrar, High Court, North-Western Provinces, should be brought to the notice of the Legislative Department of the Government of India, as showing the view held by the High Court that the intention of Act VIII. of 1859 is that the action of the Collector in conducting sales should be "a merely mechanical one", Sections 243 and 244 notwithstanding.

No. 688 A, dated Allahabad, the 5th March 1874.

From—C. A. ELLIOTT, Esq., Secretary to the Government of the North-Western Provinces.

To—The Secretary to the Government of India, Home Dept.

I AM directed by the Lieutenant-Governor, North-Western Provinces, to address the Government of India respecting the various

schemes which have been propounded to hinder the sale of land for debt by decree of a civil court, and which have during the last two years occupied Sir William Muir's serious attention.

2. The subject naturally divides itself into three heads according as the schemes related—

(1) To the more effectual working of the provisions of the present law (Sections 243-4 of Act VIII. of 1859); or, failing this, to an amendment of these provisions;

(2) To a radical alteration in the law, such as would prohibit the civil court from enforcing a decree for debt by the sale of landed property;

(3) To the more particular application of such a remedy to the Jhansie Division.

3. With regard to the first head, I am to refer you to the correspondence which has already passed, and which is noted in the margin. The Lieutenant-Governor is of opinion that if Section 244 of Act VIII. of 1859 was worked in a manner corresponding with the intentions of the framers, it would afford very considerable remedies against any injurious application of the sale law. But the effect of various rulings of the High Court has been to deprive Collectors of any beneficial discretion in the matter by refusing to allow the payment of a decree by instalments, and also to cut down the "reasonable period" to an impracticable minimum, and so to prevent any such arrangement by mortgage or farm as might obviate the necessity of sale.

From Home Department No. 1716, dated the 22nd September 1870.
This Office No. 427 A, dated the 26th July 1871.
Ditto No. 502 A, dated the 9th September 1871.
Ditto No. 2066 A, dated the 24th September 1873.

4. As it is understood that a revision of Act VIII. of 1859 is now under consideration, the Lieutenant-Governor would be glad to see a change made in the law, such as would give power to the Collector to interpose and stay the sale by making satisfactory arrangements for the liquidation of the debt. The Collector would be required to act under such general rules, and under such supervision from his superiors in the revenue line, as should prevent his authority from being abused, to the unnecessary inconvenience of the creditor. He should be enabled, when he sees a reasonable prospect of liquidation, to hold the land direct on the part of Government, or to farm it or let it on lease, or to mortgage it, or sell a portion of it (all of which powers are entrusted by Section 243 to the civil court, though seldom or never exercised). He should also be authorized (as in Section 243) to postpone the sale till the amount is raised by these means, and to pay off the debt by instalments in cases where he finds it proved that such an order is not contrary to the understanding on which the debt was incurred. In cases of sale also he should have a discretionary power to postpone the sale if a fair price is not bid, or if the attendance is small by reason of a fair, festival, or other similar cause.

5. With regard to the second head, I am to say that the Lieutenant-Governor, after the most careful consideration of the subject, has found himself unable to acquiesce in any of the solutions that have been

proposed. The long prevalence of sale during nearly three quarters of a century renders it impossible now to stop the practice; and unless sale were prohibited altogether in execution of decree of court, the difficulties in the way of any modified measure seem to be insuperable. Nor, if due discretion be given to the executive, does it appear that so violent a remedy would be required.

6. In the Jhansie Division, however, the practice of sale is not inveterate, having only come into use since the conferment of proprietary rights under the recent settlement. To place restrictions on the sale of land would not, therefore, injure vested rights, and would prevent money-lenders from obtaining a better security than they are entitled to for money lent to landholders at a time they were only "malgoozars" and could not alienate their villages. This is the third head of my subject, and I am to forward, for submission to His Excellency in Council, copies of the correspondence* which has passed between this Government and the Board of Revenue, and the Honourable Mr. Inglis, regarding the measures which should be taken to give the required relief. The Punjab system, under which the sanction of the Financial Commissioner (here the Board of Revenue) is required for the sale of land, would give practically to the revenue authorities a large discretion in the matter of such sales; and it is understood that the effect in that Province has been to make the sale of land by auction sale extremely rare, and that is only there permitted where its action would not be injurious.

* Proceedings of this Government for September 1873, Nos. 31 to 34.
This Office No. 2504 A, dated 4th November 1873.
Ditto No. 143 A, dated 12th January 1874.

No. 2504 A, dated Naini Tal, the 4th November 1873.

From—C. A. Elliott, Esq., Secretary to the Government of the North-Western Provinces.

To—The Secretary to the Board of Revenue, North-Western Provinces.

With reference to your letter No. 1015, dated 15th September, on the subject of the sale of land in the Jhansie Division, I am directed to forward, for the information of the Board, a printed copy of the correspondence noted on the margin (which had not been seen by them at the time the letter under acknowledgment was written), and to request an expression of the Board's views with reference thereto.

Proceedings of Government for September 1873, Nos. 31 to 34.

Progs. No. 31.

No. 2354 A, dated Camp Futtehpore, the 31st December 1872.

From—C. A. Elliott, Esq., Secretary to the Government of the North-Western Provinces.

To—The Secretary to the Board of Revenue.

I am directed to address the Board with regard to the question of the sale of land in the Jhansie Division. It is understood that before the settlement was completed the zemindars were only farmers and

could not sell their land; but now the proprietary right in the land has been conferred upon them, and they are at liberty to dispose of it by sale. The Lieutenant-Governor is desirous of knowing whether the practice of sale is actually in force; and if it is, His Honor would wish steps to be immediately taken to prevent the practice by the introduction of the Bill with regard to sale of land which has long been under discussion.

Progs. No. 32.

No. 679 A, dated Allahabad, the 27th March 1873.

From—C. A. Elliott, Esq., Secretary to the Government of the North-Western Provinces.

To—The Secretary to the Board of Revenue.

I am directed to acknowledge the receipt of your letter No. 163,* dated the 13th February 1873, with which the Board submit explanations on certain points noticed by Government in connection with the outstanding revenue balances in the Jhansie District which accrued during the last period of famine.

* Not printed.

2. In regard to the large proportion borne by the balance of cess to the jumma of certain villages, I am to say that the Commissioner is mistaken in supposing that the percentage of the balance of the cess was calculated on the balance of the jumma. The statement of the actual jumma and the calculation of the cess thereon, as given in paragraph 3 of my letter No. 1254 A,* dated the 3rd August 1872, is correct according to the figures furnished by the Board and the local officers; and I am again to request that the cause of the disproportion may be explained.

* Not printed.

3. With reference to your 3rd paragraph, I am to say that no official reference appears to have been made by the Board to Government regarding the sale of lands in the Jhansie Division. The Board were addressed on the subject in my letter No. 2354 A, dated the 31st December 1872, to which no reply has yet been received.

4. The Lieutenant-Governor agrees with the Board that the compulsory sale of ancestral property in the Division—under the provisions of the Code of Civil Procedure—is an innovation; and, moreover, the debts, for which this process is put into action, were incurred under a system in which the lenders had no just ground of expectation that the regulation system would be enforced for their recovery. Indeed in respect of old debts no such expectation could have existed at all.

5. There is no prospect of the Landed Estates Relief Bill being passed into law this year, and I am accordingly to request that the Board, in communication with the Commissioner, will consider what can be done to remedy the evil. Mr. Pollock might prepare lists of burdened estates, in order that it may be seen what the facts are, in order to a determination of the proper remedy.

6. The original enclosures of your letter are returned.

Progs. No. 33.

No. 1911 A, dated Naini Tal, the 5th September 1873.

From—C. A. ELLIOTT, Esq., Secretary to the Government of the North-Western Provinces.

To—The Honourable J. F. D. INGLIS, C. S. I., Member of the Legislative Council of India.

I AM directed to call your attention to my two letters* to the address of the Board of Revenue, North-Western Provinces, respecting the sale of land in the Jhansie Division, and to the record of His Honor's views on the same subject, contained in the passages marginally† quoted. Printed copies of these communications are forwarded herewith for facility of reference.

* No. 2354 A, dated 31st December 1872. No. 679 A, dated 27th March 1873, paragraphs 3 to 5.

† Paragraph 35, G. O. No. 1662 A, dated 6th July 1873 (Review of Board's Revenue Administration Report for 1871-72). Paragraph 39, Resolution No. 1749 A, dated 18th August 1873 (Review of Settlement Report of Jhansie District).

2. Sir William Muir is extremely anxious that no avoidable delay should take place in the proposal of some scheme which may avert the serious evils that threaten to overwhelm the landed proprietors of the Jhansie Division.

3. The system of sale of land by decree of civil court has been newly introduced into that territory, and the difficulties which are found elsewhere have not had time to take root and gather head in Jhansie.

4. His Honor therefore requests that without waiting for the passing of a general measure for other parts of the country, you will take into your serious consideration the manner in which relief may be afforded to the landed proprietors in the Jhansie Division. Perhaps you might find it possible to attain this end by introducing a project of law in your place in the Legislative Council, by which the system in force in the Punjab might be made applicable to the Jhansie Division.

Progs. No. 34.

Extract, paragraph 35, *G. O. No.* 1662 *A, dated the* 6*th July* 1873 (*Review of Board's Revenue Administration Report for* 1871-72).

"PARAGRAPH 35. The subject of the sale of land and ousting of the old proprietors has also been much under consideration, and the more it has been discussed the more vividly have the difficulties which surround it been felt. It was during his tour in the Jhansie Division in January and February 1872 that the Lieutenant-Governor was more deeply impressed with the necessity of taking some steps to prevent the land in that recently-acquired part of the country passing entirely out of the hands of its hereditary owners into those of money-lenders. In this Division the settlement had very recently erected proprietary right

into a saleable property, and it seemed easier to stop the evil before sales became common. But many circumstances and the expressed opinions of many officers combined to impress His Honor with the feeling that a change in the law was as much required in the older and more settled districts of the Province as in Bundelkhund. How ineffectual the present provisions of the law are to prevent sale, even of a valuable property, the Board's reports for many years have testified, and the statements contained in the present report only enforce this view. On the other hand, the benefit which the Court of Wards has been to many encumbered estates, rescuing numerous old families from ruin, is not less apparent. But the extension of this machinery to every indebted estate seems almost impossible; and every other project that has been mooted is beset with difficulties, arising from the long continuance (now for nearly three quarters of a century) of the present practice, and the vested interests and the lawful expectations thereby created. Still in the Division of Jhansie it may be possible to introduce some salutary check, even if the power of effecting any material amelioration of this state of things be found to have passed out of our hand elsewhere."

Extract, paragraph 39, *Resolution No.* 1749 *A, dated the* 18*th August* 1873 *(Review of Settlement Report of Jhansie District).*

"PARAGRAPH 39. Another crying evil is the indebtedness of these new zemindars. Their creditors find that they are now possessed of a hitherto unknown security, and hasten to make it responsible for claims that would otherwise have had but a doubtful chance of recovery. This subject is forcibly and fully dealt with in Mr. Jenkinson's report. The system which he describes (paragraph 447) is not now in force; and the baneful machinery of sale in execution of decree, carried out through the mechanical instrumentality of the civil courts, has been introduced. In this way money-lenders and non-resident speculators, having no interest in the soil beyond that of extracting the last farthing from its cultivators, are beginning to supplant the proprietary bodies. The serious evils which these transfers bring with them have been now for some time under the anxious consideration of this Government; and the same subject has simultaneously occupied the attention of other administrations. It is a difficult problem to secure money-lenders in their just rights without transferring the property in land to those who are not qualified to exercise its management, but it is one on which the future welfare of this district will much depend. In a part of the country where sale has been to the present time unknown, it seems to the Lieutenant-Governor that the executive should have a large discretionary power to stay compulsory sale, and to dispose of claims by temporary alienation, or other measures short of sale. Thus the cultivating communities, which form the thews and sinews of the Province, instead of becoming, as we find them when ousted of their paternal holdings, a sullen, alienated, and discontented body, would remain happy and contented,—their interests common with those of the British Government, and engaged in its maintenance and stability.

The subject is commended to the Board's consideration in reference to the measure now before them. Probably a special provision, similar to the Punjab and Central Provinces system, might be applied here, without the disadvantages anticipated from it in the older Provinces."

No. 143 A, dated Camp Khodagunge, the 12th January 1874.

From—C. A. ELLIOTT, Esq., Secretary to the Government of the North-Western Provinces.

To—The Honourable J. F. D. INGLIS, C. S. I., Member of the Legislative Council of India.

IN continuation of my letter No. 1911 A, dated 5th September 1873, I am directed to forward to you copy of a report No. —, dated 13th November 1873, by Mr. B. W. Colvin, Officiating Commissioner of the Jhansie Division, on the subject of the indebtedness of the agricultural classes in that Division.

2. I am to invite your attention to the conclusions arrived at by Mr. Colvin. The High Court of these Provinces declined to make the circular of the Punjab Court (which was adopted by the High Court at the Presidency) applicable to these Provinces; but the papers now forwarded give additional grounds for wishing that early steps may be taken for introducing a law by which the Punjab system of carrying out sale of landed property under a decree of a civil court, through the Commissioner of the Division and the Board of Revenue, may be made applicable to the Jhansie Division.

Minute by J. H. MORRIS, *Esq., Chief Commissioner, on Proprietary Transfers in the Central Provinces,—dated the 30th September* 1874.

THE preparation of "Revenue" and "Tenancy" Bills for the Central Provinces necessitates a decision of the question whether any, and what, restrictions should be placed on the present system whereby property in land is not only freely transferred and mortgaged, but sold in execution of decrees for debt. The subject is one which has long occupied my attention, and the prospect of early legislation, which must terminate for years all further discussion, requires that I should place before Government my recommendations in connection with the proposed Bills so far as they profess to deal with the transfers of property.

2. I shall consider the question only in reference to the interests of the proprietary class in these Provinces, and I would preface the remarks which I have to offer with the assertion, which I am confident will command general concurrence, that the circumstances here are, to a large extent, dissimilar to those with which Government has had to deal in other Provinces, and are indeed altogether of a kind to require

and claim exceptional treatment. On this point I may quote Mr. Melvill, late Judicial Commissioner, Nagpur, and now Judge of the Chief Court, Punjab. He wrote—

"The question, however, of vital importance is, whether lands should be saleable by decree of court in satisfaction of judgment. I would premise by stating that I recorded my opinion in favour of the retention of the sale law in the Punjab in 1870, and as what I wrote was probably sent to the Government of India with the other papers connected with the proposed alteration of the law, it is necessary that I should guard myself from the appearance of inconsistency, by explaining that although I did, and do hold, that land should not be exempt in that territory from sale in execution of decree on the ground that it has not been exempt during our rule, and that consequently advances have been made on the implied security thereof, yet the circumstances of the Central Provinces are exceptional, and offer a fair field for the introduction of a measure which must be politically safer, and will probably work no injury under the existing constitution of Native society."

3. The above opinion, with the opinions of other officers on the land sale question, came up for consideration in 1870-71, and a report* was made to the Government of India, Home Department, on which no orders have yet been received. The matter is one therefore which, so far as these Provinces are concerned, may be said to be already pending before Government, and must now, as I have said, be definitively settled. To aid this decision, I have obtained the views of the most able and experienced officers in the Province, and so far as the facts are concerned, I believe there is nothing more to be said.

* Letter from Secretary to Chief Commissioner, to Secretary to Government of India, Home Department, No. 741—19, dated 14th April 1871.

4. The origin of the evil occasioning the unnatural tendency of land to get transferred from the old landholding class, to effectually check which I would now strongly urge Government to legislate, is in these Provinces of recent growth. In other Provinces the change of land system which followed the introduction of British rule, however disastrous in its results as regards the ancient proprietary body, had been in force for so many years, that engagements on the faith of a settled policy characterized the entire transactions of the people; so that legislative protection in the interests of a class, however important in a social-conomic sense the preservation of such a class might be, came unavoidably to be regarded as revolutionary and impossible. It is sufficient to refer to the able discussions connected with the Revenue and Rent Bills in the North-Western Provinces, as illustrating forcibly the evil results which have followed our land transfer policy in that Province. These results here are as yet in their infancy, but that in a few years the same consequences will follow, and in their train alienate the sympathies of the most important section, in a political aspect, of the whole agricultural body, is a fact on which all revenue officers are agreed, and may be accepted as an absolute certainty.

5. I think that the provision recently made in the North-Western Provinces and the other Provinces for maintaining ex-proprietors as a privileged class of tenants in their holdings is an excellent one, thoroughly in keeping with the custom and traditions of the people. At the same time this only palliates the fall, it does not avert the ruin of the landholding class. The discontent with a system which allows proprietor after proprietor to be reduced from the hereditary position of a landlord may be somewhat softened under an arrangement that leaves to him the status of a privileged tenant, but it remains discontent still; and I am convinced that the only policy which will make this influential class contented and loyal under our Government is one that aims at upholding their proprietary interests and privileges, either by directly controlling their extravagances, or else, where heavy debts have already been contracted by timely interference on the part of revenue officers, in order to save their estates from the penalty of transfer.

6. As matters stand, there exists no bar to the inauguration of a policy of the kind in the Central Provinces, for when the Civil Procedure Code was extended here, a proviso, as in Oudh, was introduced, which was deliberately designed to check land sales. It ran—" No ancestral property in land shall be sold in satisfaction of a decree without the sanction of the Judicial Commissioner, and before acquired property in land shall be so sold, the permission of the Divisional Commissioner shall be obtained." This was intended to operate beneficially in favour of indebted landholders, and might with perfect consistency be so modified as to ensure this result. There need therefore be no breach of faith, and no interference with engagements based on conditions as they are. In my opinion Government should do now what they would have done at the settlement had the complications and dangers arising from land sales and mortgages been as clearly realised then as they are at present. The gift of proprietary right transformed land into a valuable security, and it was anticipated, other considerations apart, that by facilitating credit at reduced interest, an impetus would be given to all village improvements. There has indeed been increased credit, but too often it has proved a snare and temptation, and local officers stand appalled at the ruin which they see slowly, but surely, overtaking many of the more important and influential of the landholding body.

7. It is well to consider the position of the landlord class before and since the settlement. The villages prior to the settlement were held by farmers called Patels, Malguzars, Gaontias, and under other local designations. The larger estates were held by *quasi*-proprietors called Rajahs, Zemindars, Thakurs, &c. In the case both of the farmer and the zemindar, a hereditary right of succession existed to all the perquisites and privileges of the position, but there was no right of transfer or mortgage or sale. So far then as the possession of landed property was concerned, the position of the landholding class was one of absolute security. A creditor might charge exorbitant interest, or elaborate a false account, or attempt any kind of sharp practice, and

having done all this he might obtain a decree of court, but all his machinations were powerless against the land, *that* could neither be proceeded against nor sold; so that, however much a family in debt might be harassed —a trouble they accepted ordinarily with resignation as a merited penalty—they could not be permanently degraded from the position they had inherited, and so be ruined for ever.

8. Under our law, however, this is exactly what does happen; for the absolute property in land acknowledged at the settlement involves a sale of all rights and interests therein in cases of debt, and an execution of decree, carrying out this penalty, means to the old proprietor a sentence of permanent banishment from the position, which, above all things, he and his family have prized. A procedure of this kind is alien to the whole traditions of the people, and, whenever enforced, leaves behind a gnawing sense of injustice. I cannot think that our policy on this point is unalterable. There may be strong economic objections to the system in all its details which we have superseded, but what has been well said in connection with other circumstances applies here—you cannot bring an indictment against a whole people. Their system requires that a hereditary connection with the land should not be rudely severed, and it is for the good of the community generally that, so far as possible, the existing landlord class should be upheld in possession of their estates. Being for the good of the community, it seems to me the duty of Government to recognise this part of the Native system, and to frame our law and procedure with a view to its continued maintenance.

9. The change which has made land saleable* in the same way as moveable property in cases of debt has been too sudden. The new settlement for the first time made land a valuable security, and permitted a decree-holder to proceed against it. The obvious result was to increase immensely the borrowing power or credit of the landholding class. Now it so happens that in these Provinces a large proportion of the landholders cannot manage their affairs from year to year without recourse to the money-lender. There are marriages, pilgrimages, special charitable claims, village losses, and the other many incidents of the position, which usually involve at some time or other a loan, for, as a fact, very few of them have ever saved to meet unusual contingencies. As a body, too, they are in every way improvident, and this has probably become stereotyped as a hereditary failing, from the security felt that their landed possessions could not be interfered with. At worst a spendthrift could not ruin the family. The limit of credit he could obtain was soon reached, and then came inconvenience; but no money-lender could reign in his place, and in due course the son would inherit what it was impossible for the father to dissipate.

* This result is not in any way practically affected by the clause requiring the sanction of the Judicial Commissioner before ancestral property is sold, for that officer has reported that "option rarely exists", and "that sale has to be sanctioned almost as a matter of course".

10. The great restraint then on extravagance under the old system was the fact of the tendency being very soon checked, from the impossibility of borrowing more. A course of lavishness had thus sooner or later to be followed by a period of enforced frugality. When, however, the estate itself became the security on which money was borrowed, there remained no check on credit until the market value of the security had been reached; and this point gained, there must result in the majority of instances ejection and ruin.

11. This then is the fate which awaits a large section of those whom we acknowledged as proprietors at the recent settlement. I feel that something should be done; and I know that in this matter of borrowing, the landholders have been heavily overmatched, and in many cases their simplicity grossly imposed upon. Instances of this kind, which have come to my knowledge, need not be detailed in this place. One thing is certain, that constituted as Native society is, money-lenders cannot with advantage take the place of the old proprietors among our village communities. They are an antagonistic element, and being bad landlords, who only look to the land as an investment, they sow discord wherever they enter and occupy, and break up the old relations of the agricultural classes to the Government.

12. Statistics have been collected as to the actual indebtedness of the landholding class. The results for each district are given in a tabular form which accompanies. I shall only refer to the two worst districts, Narsinghpur and Hoshangabad. They are among the districts where the new settlements were first completed; and, although these settlements have not yet been in operation for ten years, more than 70 per cent. of the landholders are in debt; and it may safely be asserted that nearly half the proprietors are so hopelessly involved, that unless alleviating measures are soon adopted, the time is not distant when most of their estates must pass into new hands. This startling result deserves careful consideration. It cannot be urged against all these men that they have earned the penalty of ejection; nor against the many others all over the Provinces who are following in their wake. There must rather be something unsuitable in the system within which they have been brought, which tends to occasion these results; and if this is admitted, the elaboration of appropriate and effective remedial measures becomes a matter of necessity.

13. One point is quite clear, viz., that the pressure of debt and consequent loss of proprietary right has no connection with the amount of the Government assessment. There are no districts more lightly assessed in the Province than Narsinghpur and Hoshangabad. What appears is, that this very circumstance increased the value of individual estates as a security, amplified credit to an unhealthy extent, and fostered extravagance with the dimmest perception of consequences. The landholders in these districts were left annual incomes amply sufficient for all their wants, but they, in their ignorance, acted like minors in accepting loans, which were too readily offered, in order to satisfy some immediate personal call—often only to gratify an overweening desire for ostentation and display.

14. There is indeed no excuse for the heavy indebtedness of the proprietors in these two districts, but, as I have already said, the necessity for borrowing must in their position come occasionally in all districts to the majority of landholders. This fact is matter for regret; but looking at the whole surrounding circumstances, it is unavoidable. Such being the case, it follows that when their land is involved as security, proprietors no sooner borrow under the present system, than they commence to occupy a perilous position. As a class they have no knowledge of business, and when they once get into a money-lender's books a strange fatality seems to attend the transaction, and they rarely can contrive to get themselves clear. This is notorious, and has been illustrated in the case of estate after estate that has been brought under the management of the Court of Wards. Were the majority of landholders men of fair intelligence, capable of managing their affairs in a business-like way, the present difficulties would never had arisen. Our land system proceeds on the assumption that they are, and, unless modified in some way, must end in ruining all but the prudent and capable.

15. There is no overlooking the fact that such will be the result when the Narsinghpur and Hoshangabad figures are duly considered. They are as follows:

	Proprietary heads of ancestral estates.	Number in debt.	Percentage.	Number heavily involved.	Percentage.
Hoshangabad ...	1,188	846	71·3	590	49·6
Narsinghpur ...	905	634	70·1	443	48·9

Wherever proprietary profits are high, and land is as a consequence valued as security, results similar to the above are in progress. In some districts, like Jabalpur, the banker class already hold a number of villages, so that the pressure of indebtedness among the old holders does not clearly appear in the return. In other tracts, as in Chattisgarh, the monied class do not as yet care to advance much on the land as security, and here, therefore, the pressure of debt is not great, merely owing to the absence of credit. This phase will in time pass away, for, as has been urged by one officer, "astonishing as it may seem, the owners of land grow poorer, while their land is daily rising in value", and soon money-lenders in every district will advance readily on the security of the land, till we arrive at a stage when half our landholders will be on the verge of ruin—a crisis which has yet only arrived in two districts, and may by timely measures be, in my opinion, absolutely averted.

16. I have considered carefully the several remedies for the evils which I have briefly described proposed by the able and experienced officers* whom I have consulted on the subject. Before recording my own conclusions, I will deal separately with the suggestions which have been submitted by each officer. These suggestions are based generally on Mr. Raymond West's pamphlet on the "Land and Law in

* Mr. C. Grant, Commissioner, Jabalpur.
Mr. W. B. Jones, Commissioner, Nagpur.
Mr. M. Low, Commissioner, Narbada.
Mr. C. W. Carpenter, Offg. Commissioner, Jabalpur.

India", which is an elaborate review of the land transfer question in this country from a historical stand-point. It would not be possible, without extending this paper to inordinate length, to do complete justice to the different views which have been advocated. All I can attempt is to give concisely the general remedies proposed, with the objections against their adoption which in each case strike me. I must rely on the accompanying copies of the notes themselves for supplying the fullest details of the proposals, which are treated here only in an abstract form. Further, I shall only consider the recommendations made, in so far as they may aim at restricting land alienations in the future. These may or may not apply to obligations already entered into in the way of mortgage or otherwise. In any case it is better to consider separately the manner in which such obligations should be dealt with.

17. Mr. Grant urges—

"That owing to increasing competition in trade the old capitalist classes are beginning to find land on the whole the best investment for their money, and that thus the inducements to lend, and therefore to borrow, on land had received an unhealthy stimulus. As a consequence land was passing from the class which, in the fixed order of Indian society, had a natural aptitude and love for its management, into the hands of men who regarded it as a mere source of interest, and who therefore neither fulfilled to their tenantry, nor to the State, the duties which Indian custom has attached to the proprietary or *quasi*-proprietary position. Following out this train of ideas, and guiding myself by the analogies of the pre-proprietary period in these Provinces, it seems to me that the true direction in which to seek a remedy, is in an attempt to find some means of withdrawing from the land its attractions as a mere investment, without materially lessening its value as a source of livelihood to proprietors of the agricultural classes. It occurs to me that this object might be obtained by a firmer insistance on the duties of proprietorship, which, however thoroughly recognized in all theories of Indian land tenure, has nevertheless been so disregarded in practice, as to be without appreciable effect in determining the commercial value of land. Capitalists who would be ready enough to invest in land as a mere unencumbered commodity might hesitate before laying out their money to attain the position of responsible proprietors, liable on the one hand to the State, and on the other to the tenantry."

He also points out that—

"To the people probably nothing can be more unaccountable than that the Government should delegate the whole management of the land, affecting as it does every important interest in the country, to the first comer who has money to buy with."

18. His proposals are—

(1)—To impose such obligations on the proprietary body as would deter the monied class from seeking land as an investment, and in this way to effectually check transfers.

(2)—To reserve a power of cancelling the settlement in certain contingencies, when in cases of transfer the management was faulty and such a course remained the only alternative.

19. The following grounds are advanced by Mr. Grant in support of his recommendations, and cannot be better given than in his own words:

"It is I believe recognized that it does not pay to keep an agent in a village unless supplementary occupation is found for him in the cultivation of a sufficient home farm on his employer's account. In acquiring an estate then it must often be the purchaser's first object to get together enough land to make up a farm of profitable extent and equality, and this can only be done by ejecting tenants who, either as proprietors or old occupants, have hitherto had the pick of the village area. In other cases the estate purchased or rather taken in satisfaction of debt may be too poor or too distant to be worth separate management, and if so its connection with its new landlord may be, and often is, limited to to a biennial visit from a collector of rents. It is not necessary to discuss here whether of the two, the neglect in the one instance or the subversive activity in the other, would be the more injurious. The point to observe is that neither method of treatment would be possible, except under a land system modelled on the theory that land may be subjected as absolutely to private proprietary rights as any other form of property. Since the discussion of the Irish land question this view has somewhat lost favour in England; and it has never commanded a complete theoretical adherence in India, though in practice it has certainly been allowed very considerable influence in regulating the disposition of landed property. I am much inclined to think that if a firmer hold were taken of the principle that no absolute proprietary title in land can be recognized in India, and that the duties of property should be insisted upon as well as its rights, a distinct advance would be made towards the settlement of the land question in a manner quite consistent with Oriental ideas. The consequent diminution of the value of landed security might lessen the borrowing powers of landholders, but that would be an absolute advantage if it betokened a tendency to regard the possession of land rather as a source of honour and comfort, than as a mere commercial investment. The concession of proprietary right to the malguzars of the Sagar and Narbada Territories, though really equivalent to a valuable pecuniary gift, has led to the ruin of many of the old families, by turning their means of livelihood into a tempting bait for rich investors.

"On the whole, it seems to me that failure to carry out the conditions on which ownership, or more exactly speaking proprietary partnership, has been conferred, can in no way be visited more appropriately than by opening and revising the agreement as a whole. I think that the really difficult idea for an English mind to grasp is that of property subject to constant variable and not always distinctly definable burdens; but that is a condition not only familiarized by Eastern custom, a

recommendation to which we might err in giving too much weight, but also to my mind inseparable from the limited proprietary title which is all the State has hitherto been able or willing to concede in the temporarily settled Provinces. So long as the State takes the lion's share of the rents, it is simply in its capacity as a part landlord, and, putting aside all political considerations, vitally interested in the well-being of proprietary communities, and its responsibilities for the many public duties attaching to the land are, if not enhanced, at least made more intimate and direct than they would otherwise be. These functions it can only perform through its working partners, the landholders, and hence arises not only the duty, but at times the necessity, of bringing authority to bear on questions which in a more advanced state of society may be left to settle themselves. Of course on whatever theory administration may be conducted, it will be desirable to guide authoritative interference as far as possible by rule, and I do not see why if it be once admitted that the tenure of the land in India carries with it special and peculiar liabilities, the duties thence springing should not be pretty closely defined. Our relations with landholders avowedly turn on contract. We agree to settle estates with them on certain terms, which are embodied in the village administration paper, and the chief of which are on the one part perpetuity of tenancy, on the other full and regular payment of a share of the rents fixed for long periods, but variable at the pleasure of the State on termination of the lease. Now in practice this latter condition is the only portion of the compact which the State ever seeks to enforce against its lessees or partners; but if it be conceded that other public duties which the custom of the country imposes upon landholders are little, if at all less important than the regular payment of revenue, there seems to be nothing opposed either to equity or to the doctrines of political economy in taking the same means of enforcing them."

20. Much that Mr. Grant has urged commands my entire concurrence, but I regard the remedy which he has brought forward as one most difficult, if not almost impossible, to apply in a manner which would prove both expedient and effective. The liabilities and responsibilities of landholders, so far as they can be equitably enforced by law, will be provided for in the Central Provinces Revenue Bill. These responsibilities must be consistent with the terms of the settlement compact. They could not go beyond that without creating universal discontent, and thus limited they will not appreciably check transfers. Independently, however, of this consideration I know of no obligations you could impose that would exercise a practically deterrent effect on capitalists, which would not also prove most harassing and unpalatable to the existing proprietary body. If such a list of responsibilities can be tabulated, which, while choking off investors, would still command the willing adhesion of the landholders, then Mr. Grant's scheme might be made to work; but as it stands, I feel myself unable to support it, because I fail to see how it can be put into operation with any hope of practical success.

21. The following are the remedies recommended by Mr. Jones:

"I.—I would allow all landholders to sell their land outright without let or hindrance, and would confine State interference to securing them against incumbrances to operate in the future. But I would make all sales voidable until possession had been given, or until the parties had appeared before the Collector and had proved to him that the sale was *boná fide,* and not a mortgage in disguise.

"II.—I would declare ancestral land exempt from civil process except in respect of debts expressly certified against it, as provided in the next rule.

"III.—I would require lenders desiring a lien on ancestral land as their security to appear before the Collector with the borrowers, and ask him to certify the debt to be a proper debt to be allowed against the land.

"IV.—I would supplement the remedy provided in Rules II. and III. by permitting family settlements in the manner proposed by Mr. West.

"V.—I would place no restriction on the acts of parties or the action of the courts in the case of acquired land."

And he adds—

"The working of the plan suggested in proposals II. and III. above would be this—

"An owner of land desiring to raise money on its security would appear with his lender before the Collector,* explain the nature and terms of the loan, and apply for a certificate stating that the object was one on account of which the land might be properly encumbered. The certificate would be granted at once for loans required in order to improve the estate, to buy seed, pay the Government demand, or to meet pressing family necessities; it would be refused if its object were to raise funds for extravagance at marriages, &c. If the duty of scrutinising applications and granting certificates were entrusted to the Registration Department, the work could be done without imposing much labour on Government officials or trouble on applicants, and as a collateral advantage, we should obtain a complete knowledge of all the encumbrances affecting land all over the country. When a certificate had once been given, I would let the civil courts deal with the land with as much freedom as with moveable property; until it had been given I would not let them issue process against it at all."

* "I include under Collector, Assistants, Tahsildars, and such other officials as it might seem fit to entrust with the duty of receiving these applications."

22. For dealing with the disease in its origin, the above scheme, declaring all ancestral land exempt from civil process except as regards debts duly certified against it by the Collector, *if it could be uniformly and judiciously applied,* would be most effective. The difficulty, however, of satisfactorily working such a scheme would be very great, and I have little doubt that it would to a certain extent be an unpopular

measure. It would be possible to declare by precise instructions as within the scope of admissible loans all such as should fairly be allowed, and thus to limit the large range of personal discretion which the bare declaration of the rule seems to contemplate. But even admitting this, there must after all remain much uncertainty in the application of the rule; and under officers with different views, there would be the greatest variation in practice, viz., at one time or place a reprehensible facility in borrowing, and at another an interference amounting almost to absolute prohibition.

23. Not only, however, is the system proposed one which must of necessity apply in an uncertain manner, but its effect on credit it is impossible to estimate. It might almost destroy the borrowing power of the landholding class, owing to the intervening impediments attending money transactions based on the land as a security; for money-lenders would probably give up taking much of such business on the terms, with all the delays that would be inseparable therefrom. It would doubtless increase also the current interest charge on all landholders alike; and wherever the rule itself was strictly enforced, it might cease to be effective, for there would always be the fear of collusion, and money would often be raised by a certificate obtained under false pretences.

24. The fact remains that no scheme can be proposed which is not open to some objections, and I feel that those I have urged and others, such as the amount of work it would throw on the district officer, can be brought against the plan proposed by Mr. Jones. There is this much, however, to be said in its favour, that its plain tendency will be to permanently check extravagance, which is the bane of the whole proprietary body; and as a practical remedy for an evil so disastrous in its results, it seems deserving of careful consideration. My reluctance to give the measure unqualified support is the feeling that all its effects cannot with any confidence be foreseen, so that although it would achieve one important end aimed at as mentioned above, yet that as regards other consequences which must follow from its operation the step would to a large extent be "a leap in the dark".

25. Whatever opinion then Government may form of Mr. Jones' general scheme, I think that his support of Mr. West's proposal for a system of family settlements, concurred in as it is by other officers, may be accepted as conclusive proof that some plan effecting this object requires to be devised for these Provinces. It would only apply to the owners of large estates, and would tend to maintain intact the great body of zemindars and chiefs in the position of social superiority in which we found them. Even an entail for one generation would be a great protection against recklessness; but as regards these larger properties I should be glad to see them placed under a permanent law of entail, which would prove an effective bar to all future alienations—a course which would be in keeping with the history and traditions of the past and in consonance with the wishes of the people.

26. On this subject of maintaining the better families in their position of comparative eminence, by a system of family settlements, or in some other form, the following remarks of Mr. Jones are appropriate, and seem to me to deserve attention :

"The feeling of the people is for something that shall give permanence to their families, something that shall enable them to secure themselves against the recklessness or weakness of their children. India is now (to borrow an illustration from the author of Notes on Indian Affair) much in the position in which England would have been if in the days of Richard I., when our nobility were all in debt to Jews for money borrowed for tournaments and crusades, she had been conquered by an African nation proud of its civilisation, and bent on giving her the benefit of economic principles which had been found to answer at home. Had such an event occurred, civil courts would soon have done their work in transferring the land to the Jew (as Mr. Bernard remarked the Marwari is the Jew of India) and the healthy spontaneous development of a great people would have been stopped.

"A rich banker of Jabalpur once came to ask me to show him some means by which he could tie up his money for one life, and expressed his readiness to invest one or two lakhs, I forget which, in Government securities, if this would aid his purpose. So strong is the feeling to which I refer that I believe that if the privilege of family settlements were attached to money invested in Indian securities, the bulk of the debt of the country would pass into the hand of Natives."

"Hindu institutions formerly did the work which the power of entail did in England, and I am convinced that if we would avoid violent social revolutions, disastrous alike to our subjects and ourselves, we must provide something to supply the place of the institutions we have superseded. I have no 'fancy for reconstructing Native Indian society upon a purely Native model', but I see that 'our unintended influence metamorphoses and dissolves the (ancient) ideas and social forms, and that there is no expedient by which we can escape the duty of re-building upon our own principles that which we unwillingly destroy'. The complaint which natives of Oudh made to Sleeman that four times more of their ancient families had gone to decay in the half of the territory (Oudh) made over to us in 1801 than in the half reserved by the 'Oudh Sovereign', is one the like of which we may hear in too many parts of these Provinces. If we would free ourselves of such reproaches, we must cease to Americanise, and adopt measures like Mr. West's family settlements, which shall recommend themselves to the instinct of the people, as well suited to the transition state in which they now find themselves."

Village Community, page 27.

Oudh, Vol. 1, page 164.

27. I next come to Mr. Low's proposals. After a very full and exhaustive history of the position and of the circumstances with which we have to deal, he lays down the following as the principles which in in his opinion should form the foundation of any measures

that may be taken for the protection of the interests of the proprietary body:

"*First.*—That in all proprietary tenures, ancestral or acquired, performance of duties attaching to landed property should be more insisted on than it is, that these duties are not defined with the requisite distinctness; but that they are practically capable of specification and enforcement by law, and ought now to be so specified and enforced.

"*Second.*—That the unlimited power of transfer, included in the recently bestowed proprietary rights, has no intrinsic title whatever to inviolability; but that, on the contrary, the question of its retention, modification or revocation ought to be considered as a question simply of expediency in the interests of the landholders.

"*Third.*—That in the case of ancestral property no remedy applying merely to conditions outside the tenure of the land itself offers any reasonable guarantee against the perpetuation of the evil arising from the landholders' present unrestricted power of borrowing; that the directest remedy is in this case the best, and that a large restriction of the existing power of transfer of proprietary rights is not 'merely expedient in the interests of the landholders', but is even absolutely necessary for their preservation in the immediate future.

"*Fourth.*—But that at the same time absolute proprietary title, subject to performance of specified obligations, ought to be recognized even in the case of ancestral property, as soon as the old landholders shall be fit to enjoy it without destroying themselves, hence our legislation should be of an educational, as well as of a preservative, character, leading forward the old landholders gradually to future full freedom, by entrusting them now with a partial freedom. Also that we have no means of predicting whether the effect of the education and of unknown conditions in the future will be rapid or tardy, whether the old landholders will be a long time or a short time in fitting themselves for the position to which they must attain ultimately, whether they will be quick or slow in passing the bridge over the interval between the old things and the new, hence our legislation should be avowedly temporary."

28. Starting from these principles, he suggests the following remedial measures:

"I.—The duties and liabilities attaching to proprietary rights to be codified and enforced under special penalties.

"II.—Proprietary rights in ancestral property to be declared inalienable by the holder, in so far as regards three-fourths of each estate. The remaining one-fourth to be alienable at the owner's pleasure.

"III.—No ancestral property to be transferable by the holder, either permanently or temporarily (save by way of lease), and no

civil process to be executable against it, except in the manner provided, and except in respect to debts certified under the following rule:

"IV.—Persons intending to purchase or acquire mortgage or other lien (except a lease) on ancestral property to be required to attend with the owner before the Collector, and obtain from that officer a certificate to the effect (1) that the consideration proposed to be given was *primâ facie* sufficient consideration, and (2) that the present and all previous transactions included, no more than one-fourth of the owner's total ancestral land in the district had been parted with, or that his total estate was not burdened beyond one-fourth of its total value, as the case may be. No property burdened to be certified for sale, except with the consent of the lien-holder. No record of sale or lien to be taken off the Collector's registers until after the same formalities of attendance by obligor and obligee, or on decree of the civil court.

"V.—No lease of ancestral property for any term beyond two years to be enforceable by law, whether or not possession was given. Parties to be required to go before the Collector to register a lease; and no lease to be good at law unless certified by the Collector to be on his register, and to relate to property not burdened under Rule IV.

"VI.—Rules II., III., IV. and V. to be declared in force during currency of the present settlement. The question of retention, modification or rescission of restrictions under these four rules, at the next settlement, to be left an open question."

29. After a careful consideration of Mr. Low's proposals, I find that I cannot advocate the introduction of arrangements, such as those suggested by him. The limit of credit, so far as the alienable portion of an estate was concerned, would in most cases soon be reached; and after this the landholder's life would be a perpetual struggle, followed ordinarily by serious deterioration of the property—a result which Government is directly interested in preventing. Then, in a large number of cases, the alienable portion would inevitably come to be transferred to the money-lending class. This in itself would be a great evil, and would give rise to endless disputes and complications ruinous to all the interests of the land-holding class, and harassing to the tenantry. Whatever might be the educational advantages of the process, the sacrifices and trouble involved during a long interval seem to me too dear a price to pay for an end uncertain at best, and one, which with a fourth of the landed property at stake, might after all not be attained.

30. The main justification for interference in some shape with the unrestricted power of transfer is the ruin which its continued possession is sure to bring, sooner or later, on a large section of the proprietary body. The matter, however, is not only urgent so far as their interests are concerned, but it involves the interests of the State, as an important partner deeply and vitally concerned in all that relates to the land. Those who have always been associated with the Government of the day in the management of the land, who have guided and controlled the

village communities, and whose old traditions and sympathies bind them to the soil, are clearly *the* persons whom the State is bound to maintain in their ancient position. The eagerness to maintain at least this part of the old system, as essentially beneficial to every interest, is common to all who have taken part in this discussion, and requires to be steadily kept in view.

31. The preservation, then, of existing landed relations, so far as possible, being the aim and end of all that is proposed—a scheme which allows a stranger with a decree in his hand to step in and hold a fourth of any estate, or share in an estate—is a departure from the principle which seeks to keep out from the village counsels whatever would occasion disturbance and discord. Every estate brought under a scheme such as suggested would be subject to an innovation disastrous in most cases to any prospect of harmonious management; and the result would be that everywhere there would be an "outsider" interfering in village affairs, whose action could scarcely help proving an element of perpetual antagonism. These are the grounds which would be fatal, in my opinion, to the smooth working of Mr. Low's plan. It would certainly afford partial relief for a certain interval, but it would create difficulties, from which the whole agricultural community would suffer, and of a kind for which it would be almost impossible to devise remedies.

32. The last suggestions I have to comment on are those of Mr. Carpenter, who has recently joined the Jabalpur Division from the North-West. His acquaintance with these Provinces being short, he is not in a position to speak authoritatively on what steps should be taken, or indeed if any steps should be taken, to prevent the certain severance of a large portion of the old landholders from their estates. He writes—

"(1.)—I am averse from any sweeping measure, such as the abolition of the sale of land for debt, or any restriction on the transfer of land. The effect of any such measure would certainly at first be unfavourable to debtors; and it would produce a diminution in the value of property which would be very unpleasing to the landholding classes, and would probably lead to the measure being misunderstood by the very persons it is intended to benefit. It would be unwise, in my opinion, to introduce any measure of this kind of which the results cannot clearly be foreseen.

"(2.)—Our objects should be, I think—

"(*a*)—To put the careless and ignorant borrower on more equal terms with the money-lender.

"(*b*)—To diminish the rate of interest on loans by improving the value of land as security.

"As to (*a*), I observe that when once the ordinary illiterate peasant landholder has executed a bond in favour of the money-lender, he is, as regards the accounts of payments under the bond, almost entirely in the hands of the lender. What he pays the lender credits in the way that suits him best, and if the lender omits to bring to credit any of the

sums paid, the debtor has but little chance of proving payment. After a given number of years the lender comes into court, the debtor has no evidence, and the claim is decreed purely on the lender's books. This is an unfair state of things. The Government ought, it seems to me, to see fair play. The remedy I advocate is to compel the money-lender to file annually a statement of his accounts with any landholder under any bond by which landed property is hypothecated. This statement would be filed in the Registry Office in which the bond was registered, and would be open to inspection by the debtor. The statement would merely show what sums had been received from the debtor during the year, how they had been credited, and how the money-lender's claim stood at the end of the year. Any attempt at fraud would be then detected at once, and any dispute would be brought at once to an issue.

"As to (*b*), I observe that as high interest means bad security, everything that can be done to increase the value of land as security will be something done towards lowering the rate of interest. The chief reason why security is so bad in this country is the untrustworthy and procrastinating character of the people themselves. If then we wish to assist borrowers as a class, we should endeavour by the action of our courts rather to facilitate the recovery of loans by lenders than to throw difficulties in their way. One main cause of the high interest demanded by money-lenders from landholders is said to be the uncertainty that exists as to how far the land offered as security has been previously involved. There are at present no means, except personal search in the Registry Office or personal enquiry, of ascertaining whether any bond exists involving any given property or not. I would propose that a general register of landed property should be kept up in every tahsil, which would show the liens existing at any time on every share in every village. Such a register once compiled would cost little pains to keep up. An inspection of it would show any money-lender asked to lend money on any property, how far he would be safe in lending it. It can hardly be doubted that by such an arrangement the security of loans on land would be increased."

In a second communication he adds—

"If a strong remedy is considered absolutely necessary, I should recommend that which was proposed in the first instance by Sir William Muir, and which was advocated by Mr. Crosthwaite as part of his scheme in the *Calcutta Review*, viz., to exempt land from sale in execution of decree, and to leave it liable only to transfer to the creditor for a term of years. The effect of this measure would be to limit the landholder's power of borrowing to the value of a lease of the land for the specified term, because the money-lender would not lend on the security of the land more than he could recover by going into court. By fixing the term at a short period, say eight or ten years, landholders would be effectually prevented from encumbering their estates beyond a moderate extent. If a landholder required more money than he could raise upon this limited security, he would be compelled to sell his estate, or part of it outright, and it is evidently better that he should do this and get a

full value for his property, than allow his estate to drift out of his hands in satisfaction of a debt, the greater part of which is composed of interest. The measure is of course open to obvious objections: but it has this great advantage over other proposals, that the objections against it *are* obvious, and can be seen and weighed beforehand. It is self-working, and does not depend for its success on the ability or discretion of human agents.

"The principal objection to the measure is, that for some years at least it would accelerate, instead of retarding, the alienation of land. The measure would be only prospective, and it would afford no relief to those already in the money-lender's shackles, but, on the contrary, by diminishing their borrowing power for the future it would bring their affairs sooner to a crisis. It would thus cause hardship to many at the outset, and would doubtless be received with disfavour. The second objection is that it would raise the rate of interest. Interest depends not merely upon the sufficiency or otherwise of the security, but on its convertibility. One of the chief drawbacks to land as a security, even at present, is the difficulty of converting it speedily into cash, and this difficulty would be greatly increased when the security consisted not of the land itself, but only of its usufruct for a certain number of years. The security being diminished in value, the rate of interest would rise. These two objections seemed to me to be fatal to the measure in a Province like the North-West, where the unrestricted disposal of land has been permitted for so long, and where a violent change would tend to shake the credit of Government. I accordingly opposed it there. But in the Central Provinces, where proprietary right has been so recently conferred, the condition of things is different. The immediate evil effects of the measure would sooner pass over, and the lasting good effects would ensue more quickly. If any strong remedy is to be adopted this is that which I should advocate."

33. A scheme of this kind under which land could not be burdened with mortgages, and the power of borrowing is limited to the value of a lease for a fixed number of years, possesses obviously the great merit of proceeding directly to the end aimed at, viz., the effective checking of alienations. Its effects can be distinctly foreseen; and with a knowledge of these the acceptance or otherwise of the scheme depends on the view taken of the resultant gain after all drawbacks are admitted. There would be a sensible impairing of credit, but in exchange the unhealthy power of borrowing would disappear. The threat of claiming possession would result doubtless in a continued renewal of exorbitant terms, and keep many proprietors in a perpetual state of indebtedness from the necessity of meeting heavy annual interest claims, but it would become difficult to achieve their utter ruin and induce them to consent to sale. So far a clear advantage would result.

34. One fact, however, is certain, that almost every estate transferred on lease, in satisfaction of a money claim, would deteriorate. The object of the lessee would be to gain as much as possible during the

period of his lease, and to this end it might be that the best interests of the property would be sacrificed. There is great fear also that the ryots would be harassed, and exposed to every form of exaction and cesses; and altogether the interval of the lease would probably in most cases prove a bad time for the village. Still it would only be for an interval, and thus would impose hard conditions for a time only, instead of such conditions being permanent, as they are liable to be, in villages transferred for good to the money-lending class, under the present system.

35. I have now reviewed the several courses of action recommended by different officers in view of maintaining the connection of the old proprietary body with the land. To summarize: Mr. Grant would check transfer by attaching new liabilities to property, the effect of which would be to make it not worth holding as an investment. Mr. Jones would interpose formidable obstacles in the way of borrowing at all when land was to be offered as a security. Mr. Low would make three-fourths of all landed property inalienable, leaving the remaining fourth to be disposed of at will. Mr. Carpenter would only leave land liable to temporary transfer for debt, as under a lease for a fixed term of years, thus limiting the landholder's borrowing power within the value of a lease for the said maximum term.

36. The final decision of the question raised in this discussion does not rest with me, and I have not therefore the responsibility of deciding definitely which of various suggested schemes is the best suited to the circumstances of these Provinces. In forwarding the papers I shall merely propose alternative schemes for adoption by Government, and first I would recommend that land in future be exempted from sale in execution of decrees for simple debt. If mortgages are still permitted to be freely entered into, no doubt a provision disallowing sales of land in execution of decrees for debt will result in all loans being secured by a mortgage on the land. But clearly a proprietor making an engagement of this kind sees the consequences of failure. In cases of simple debt this is not the case, and when the land comes to be sold under the order of the courts, the whole procedure is looked upon as some inscrutable action of Government, for the people cannot separate the action of the courts from that of the Government. It cannot be comprehended why a simple debt, when there was no special lien allowed on the land, can involve such a penalty, and I would therefore hereafter protect the land absolutely from being proceeded against in all cases of simple debt.

37. I would not interfere in any way with the right of private sale, but I would practically bar mortgages and other encumbrances on the land intended to operate in the future, by providing that whenever money is borrowed on the security

* Since this was written I have seen Sir William Muir's Minute on land sales. His measure was less restrictive than that here proposed, and permitted all mortgages with stipulation of conditional sale to continue. Such concession was probably necessary in a Province like the North-West. Here it would frustrate any remedial measure, and would therefore not secure the end aimed at. These Provinces are not in the position of the North-West districts generally on this land sale question, but they closely resemble the

of land, it will only be possible to proceed against the latter by obtaining possession in satisfaction of all claims for a maximum period of ten years. An arrangement of this kind has the high authority of Sir William Muir* in its favour, and I think it may be safely applied, without involving any unwelcome consequences, to all future engagements involving land in the Central Provinces.

adjoining Division of Jhansie, and regarding this division I find Sir William Muir writing—"I can conceive nothing more disastrous for the Jhansie Division than to sanction a system which must end in reducing the powerful and turbulent proprietors of Jhansie into tenants at the will of a body of non-resident speculators, whose only object will be to squeeze out of them the highest return for their money". This is the fate which I am trying to avert from the similarly situated proprietors of the Central Provinces.

38. I have already dealt with the objections that can be urged against such a scheme. If these are deemed conclusive against the proposal, then I would recommend that the power of the Court of Wards be extended, so that in each district the Deputy Commissioner's Court may be able to act as an Encumbered* Estates Court. I would still prohibit all sales of land under decrees of the civil court for debt, but I would allow money to be raised, as at present, on mortgages. The credit of landholders would in this way not be materially interfered with. In the case of those who got hopelessly involved, or who felt unable to deal with their embarrassments, I would provide a ready remedy by allowing their estates *on application* to be taken under direct management by the Deputy Commissioner. Once such an application was filed, I would bar any further institution of claims against the applicants in the civil court, or the execution of decrees against their persons or property. The Deputy Commissioner having received the application would examine all claims, and if the estate was solvent, would proceed to manage it in the same manner as is the practice at present under the Court of Wards. If the examination of the claims proved that the applicant was already irretrievably ruined, then the Deputy Commissioner would finally decline to assume the management, and the civil courts would resume their ordinary functions.

* The term is used here in the sense of a court for clearing off incumbrances, and rehabilitating proprietors. A court acting like the Irish Encumbered Estates Court is of course not contemplated. The main object of the enactment there was to free the land and give a good title.

39. The advantage of some such protective arrangement as above suggested is that there would be the least possible disturbance of existing conditions. It would be a mere amplification of the provisions of Section 194 (g) of the North-West Provinces Revenue Act. It would apply a remedy, whenever possible, as soon as assistance was sought by a landholder in pecuniary distress, and practically it would in no way injuriously affect the interests of any class. I am sure it would be appreciated by the people, and would show that Government was anxious to render assistance whenever required. In a majority of cases also it would be effective, for money for the purposes of the Court of Wards can always be obtained at a low rate of interest, and long before extremities had been reached, landholders would commence to see that their only safety lay in making their estates over to the Collector. Once made

over, he would have full power to deal with them as he considered best in the interests of the family, and a stringent reduction of expenditure under orders often itself gives a tangible surplus in the most indebted properties. Such reductions weak landholders are powerless to carry out themselves, and it is frequently useless expenditure on show and ceremonial that accelerates their ruin.

40. A plan which only professes to deal with estates when proprietors have got into difficulties, and pray to be extricated, will obviously exercise no appreciable effect on extravagance. This is admitted; but then it must be remembered that this very extravagance is the result of increased credit, flowing from the new land system and transferable rights which we have recently introduced among a weak and ignorant proprietary body, who have proved unable, unassisted, to maintain their position. Such being the case, I feel that we are bound to intervene, and the form of intervention now proposed, which affords assistance only to those who need aid and apply for it, has much to justify it, and merely elaborates an agency which already exists for minors and idiots.

41. The third alternative scheme which I propose is that of Mr. Jones. This would clearly check extravagance, and bring all debts raised on the land as a security within effective control. It is doubtless better in principle to have a system in operation which as a result will prevent indebtedness than one which only deals with the disease when it has assumed formidable proportions, and needs a severe remedy—a remedy which in some cases will be applied too late to avert ruin. It is for Government to decide whether the merits of the scheme are sufficient to over-ride the objections which have already been urged against its suitability and prospect of success.

42. My proposals then, put concisely, are—

I.—All property in land in the Central Provinces to be declared exempt from attachment or sale in execution of the decrees of the civil courts for debt.

II.—The only lien admissible on landed property to be of the nature of a lease for a maximum period of ten years; it being transferable to the creditor in satisfaction of a claim for a fixed period limited as above; or

II.—An extension of the jurisditiction of the Courts of Wards, so as to include all cases of indebted landholders holding villages or shares in villages who applied to have their affairs temporarily arranged and managed by the Deputy Commissioner, with a limitation of the jurisdiction of the civil courts during that management; or again

II.—No lien on landed property to be recognized in any civil court except such as were certified by the Deputy Commissioner, on whose certificate alone land could be pledged as security and held liable for the satisfaction of a debt.

43. These are in abstract the alternative remedies I suggest as regards the *future* money engagements of the proprietary body. In each case the details would require to be carefully worked out and put into a shape which would admit of being readily administered. I make no distinction between ancestral and acquired property, because it is difficult to lay down a precise distinction which would work satisfactorily, and in these Provinces the distinction itself is not important, as the settlement being recent, the number of acquired properties properly classifiable as such is as yet very small.

44. I now turn to the case of the proprietors already overwhelmed in debt whose extreme position has raised the present controversy; their condition being one which must inevitably in a few years, under our existing land system as it stands, overtake the bulk of the proprietary body. There is a general concurrence of opinion that the case of already indebted proprietors can most appropriately be treated by an extension of the Court of Wards' jurisdiction. If then this is the form of remedy accepted by Government as the best to apply to the *future* exigencies of the landholding body, then the same scheme will cover all cases of indebtedness, both *past* and *future*, and nothing further will require to be done. Otherwise the Court of Wards' remedy is the one I propose to apply with the view of relieving *already involved estates*, and for this end it will effect all that it is possible to achieve, due regard being paid to the enforcement of all equitable engagements already contracted.

45. In all that has been suggested I have urged nothing that I would not have recommended at the time of settlement had the consequences attending the free power of transfer then conferred, both to the State and the people, been foreseen. One great object* of all that was at that time done was to improve the position of the landholding class, and by enhancing their rights and privileges, to endeavour to maintain their hold on the land, which was made in every way a more valuable and desirable possession. Such would have been the result with any Western people, but with a newly made proprietary body, the mass of whom are seen to act like children in money matters, who are easily flattered, fond of ostentatious display, absent in foresight, ignorant of business, blind to interest calculations, and to the obvious consequences of exacting

* The orders of Government, in the Foreign Department, No. 2279, dated 28th June 1860, to Commissioner, Nagpur, regarding the settlement, from which the following extracts are given, show that although proprietary right at the time was at least conceded *absolutely*, it was originally only proposed to grant it with salutary restrictions:

"You state that instructions to the Settlement Officer regarding proprietary right will be submitted for the sanction of Government at a future date. Meanwhile you observe that no proprietary right in the soil has ever been admitted, though the incumbency of many of the malguzars has been long enough to establish it. You propose now formally to admit this right, and even to restore possession to those who under the former Government have lost their incumbency from the avarice of the ruler or the caprice of his officers. You would, however, admit the proprietary right, subject to certain conditions. You would allow the holder to mortgage his property for a term of years under restrictions and to sublet it, but not to sell it, at least for the present, nor would you make the land liable to sale in satisfaction of decrees of the civil courts. You would lend

your efforts to improve the position of the village headmen, to re-establish old families and associate them with the Government in the suppression of crime and the improvement of the country, and you would leave the malguzar from 30 to 35 per cent. of the gross rental, and in some cases 40 per cent.

"In regard to the admission or creation of a proprietary right in malguzars, I am desired to state that the Governor General in Council is strongly in favour of the measure, so far as it can be carried out without prejudice to the rights of others. But His Excellency in Council is in favour of giving the proprietors thus created as large and absolute a control over the property vested in them as is consistent with local usage and feeling. When such usage and feeling are not opposed to the measure, it can only tend to the prosperity of the Province to confer on every landholder, as nearly as possible, a fee simple in his estate, subject only to the payment of revenue to the Government, and to put it in his power to dispose of his interests in the land as he pleases by sale, gift, mortgage, and bequest or otherwise; and though it is not desired that this policy should be pushed so far as to do violence to the feelings of the agricultural community, or to interfere with vested interests, yet His Excellency in Council wishes you to bear in mind that it is not the wish of the Government to limit the proprietary right any further than a due respect for such feelings and interests requires."

engagements, the new privileges conceded in the interests of the community and the Government, it is clear now, should have been hedged round with restrictions, if with no other view then in order to save them from themselves. This is what is now proposed, and it is perfectly consistent with the whole scope of the proceedings of the settlement.

46. As regards the money-lending class, the contemplated changes in no legitimate way alter their position. When a lien on the land has already been actually contracted for, that engagement holds good. When money has been lent on the implied security of the land, an interdict as to proceeding against the land is a justifiable amplification of the Oude clause, which absolutely prohibited sale without sanction. It is true this has not proved effective, but it was always intended that, as far as possible, it should bar sale. The proposals now made then merely ensure a protection which has more or less always been deemed a result just in itself, and necessary in the interests of the people.

47. My own intimate connection as Settlement Commissioner with the settlement of these Provinces imposes on me a heavy responsibility to spare no effort to remedy any results associated with its proceedings which appear in their consequences to be fatal to the best interests of the agricultural community, subversive of important hereditary rights and privileges, destructive to the harmony of the recognized village system, and injurious to the name of the Government with the people. I think that these consequences must certainly follow the apparently inevitable transfer of a large portion of the landed property from the old landholding body to the grasping and unsympathetic money-lending class. Thinking so, I have now urged Government to deal with the question. It is not very material what remedy is applied, so long as the remedy is one capable of being appreciated by the people, and in its operation effective. I would press, however, for immediate consideration. Every day's delay increases the difficulty of acting at all, while, as matters now stand, if action is taken at once, the estates lost to the ancient landholding class in the future will be comparatively

few. Even if Government should decide that it is inexpedient, looking at all the circumstances, to move in the matter at all, this will be preferable to continued uncertainty, and a constant expression of regret at transfers which would then require to be accepted as a necessary accompaniment of our revenue system.

J. H. MORRIS,
Chief Commissioner.

Note by Mr. C. GRANT, *Commissioner, Jabalpur Division, on Mr. Raymond West's pamphlet on the "Land and Law in India", and on some questions arising out of it.*

I ASSUME that for the purposes of the present discussion it is admitted that the transfer of land is an evil, and that the only question is how to remedy it.

Many remedies have been proposed from the simple straightforward plan of putting a veto on sales to Mr. Crosthwaite's suggestion of giving the State a right of pre-emption. Most of them seem to me to come under the imputation of treating the symptoms rather than the disease, and though attempts to look below the surface must of course lead to very different results, I think that without aspiring to any recondite discoveries much of the difficulty of the land question may reasonably be referred to the effects of our system in converting the possession of land from its former function, as the occupation of a class, into a mere investment for capital. Evils arising from so deep-seated a cause as this cannot be combated by mere superficial treatment as experience has shown. Nothing, for instance, seems simpler, and therefore more likely to prove effectual, than the restrictions placed on the sale of land in this and other Non-Regulation Provinces, in which no ancestral landed property can be sold without the Judicial Commissioner's consent, while even in the case of acquired property the sanction of the Divisional Commissioner is requisite. But in practice the veto is almost inoperative; for as soon as the certified claims against an estate mount up to a point nearly approaching its money value, there is nothing left to save for the indebted proprietor, and the temporary transfer, which is the only resource of the controlling authorities, loses its virtue. So long as the rents after payment of all interests leave an appreciable margin towards clearing off the principal of the debt, authoritative interference may be of service in postponing sale; but in such a case all but very helpless debtors can save themselves by raising new loans. The law, too, is very easily defeated by the practice, now becoming common, of requiring the guarantee of a conditional sale to loans on the security of landed property. In my experience the veto has seldom, if ever, been successful in staying sale, unless it has been assisted by the discovery of error in the procedure or calculations of the lower court, or backed up by a Government loan to free the estate.

The reasons seem plain enough. Under a Government which, whilst keeping the peace and opening communications, closes the ordinary avenues of ambition, the energies of the country must find their chief vent in trade. The old established capitalists of the country are beginning to find that they have no longer a monopoly of its internal commerce, and that the expansion of the credit system, caused by the greatly increased rapidity and security of transit, brings countless petty speculators into the field against them. Indeed rich traders commonly bewail the difference between dealing in an old fashioned way with well known firms, and running the gauntlet of speculation with the thousand men of straw springing from nowhere, and blown away by the first adverse wind. Not only do these free lances of commerce very much embarrass more regular dealers by the uncertainty of their movements, but, having nothing to lose, they impede the old roads to profit by crowding forward to scramble for small gains. The result is, I believe, that capital is more than ever turning towards the land. In this part of the country it is thought a fair investment to get land for ten times the Government revenue assessed on it, which, allowing for cost of management, losses, and so on, would probably not give the purchaser more than 6 per cent. interest on his money. It may seem opposed to experience that Native capitalists should content themselves with so small a return, but it is a fact that quite recently the principal *millionaire* of Central India offered to the Administration of these Provinces any amount of money that might be required by the Court of Wards at 6 per cent. on the security of the estates benefited. There is therefore nothing in the apparently unprofitable character of the investment to create the idea, unsustainable in very many cases on other grounds, that the tendency of traders to purchase land may be accounted for by motives unconnected with trade. Such, for instance, as hope of personal aggrandisement or the wish to found a family. There are no doubt many bankers and merchants who are open to such influences, especially among those who do not belong to the mercantile class; but a great number, if not a great majority, of moneyed investors buy land as they would any other commodity, simply because they think it pays. A natural tendency of this kind cannot be checked by merely frowning on it, and it may be a question whether even a system of absolute prohibition would not be either habitually evaded or swept away by the over-ruling force of circumstances. The current of capital to the land, if it is to be stemmed at all, must be met before it has gathered head; and this can only be done by altering the conditions of land dealing. At present not only is land freely transferable, but after transfer it is almost absolutely at the disposal of the transferee. Thus estates bought simply as investments are almost necessarily managed on commercial principles; and though selfish enlightenment may, up to a certain point, counsel the support of cultivators as a means to the end of maintaining cultivation, it does not follow in every case, even when the interests of landlord and tenant are identical, that an absentee trader misled by designing agents should realise the advantage of present sacrifice for the sake of future gain. It is not, however, at all certain that in the movement now

observable towards the destruction of cultivating occupancy rights mercantile landlords are more active than some long descended Chiefs; but a great proportion of this latter class is too ignorant and apathetic to move at all; and even in the case of those who do, the usurpation of power by men to whom it is due in the popular opinion is less likely to create resentment than the complete upset of all customary arrangements which must often follow the attempts of a speculating purchaser to organize his acquisition on a profitable footing. For instance, it is I believe recognised that it does not pay to keep an agent in a village unless supplementary occupation is found for him in the cultivation of a sufficient home-farm on his employer's account. In acquiring an estate, then, it must often be the purchaser's first object to get together enough land to make up a farm of profitable extent and quality, and this can only be done by ejecting tenants who, either as proprietors or old occupants, have hitherto had the pick of the village area. In other cases the estate purchased, or rather taken in satisfaction of debt, may be too poor or too distant to be worth separate management; and, if so, its connection with its new landlord may be, and often is, limited to a biennial visit from a collector of rents. It is not necessary to discuss here whether of the two—the neglect in the one instance, or the subversive activity in the other—would be the more injurious. The point to observe is that neither method of treatment would be possible except under a land system modelled on the theory that land may be subjected as absolutely to private proprietary rights as any other form of property. Since the discussion of the Irish land question this view has somewhat lost favour even in England; and it has never commanded a complete theoretical adherence in India, though in practice it has certainly been allowed very considerable influence in regulating the disposition of landed property. I am much inclined to think that if a firmer hold were taken of the principle that no absolute proprietary title in land can be recognized in India, and that the duties of property should be insisted upon as well as its rights, a distinct advance would be made towards the settlement of the land question in a manner quite consistent with Oriental ideas. The consequent diminution of the value of landed security might lesson the borrowing powers of landholders, but that would be an absolute advantage if it betokened a tendency to regard the possession of land rather as a source of honour and comfort than as a mere commercial investment. The concession of proprietary right to the malguzars of the Sagar and Narbada Territories, though really equivalent to a valuable pecuniary gift, has led to the ruin of many of the old families, by turning their means of livelihood into a tempting bait for rich investors. The old farming or malguzari rights, however much sought after by men of the agricultural class, had little attraction for town bankers, and therefore although the authorities were occasionally asked to recognize transfers for the satisfaction of debt, creditors ordinarily avoided personal management of the land so long as they could absorb its produce through their debtors. Thus there was not the same object as now exist for feeding the extravagance of clients up to the

point at which recovery is impossible, and the flow of capital to the land never threatened to swallow it up.

It would probably be impossible, even if it were desirable, to restore a state of things which events have in themselves gone far to supersede, but experience of the past may at any rate help to indicate kindred means of preserving the land for the classes to which it is the breath of life. The most radical remedy would of course be to fit the landed classes by education to hold their own, but that may be left out of consideration, as even if we could hope that civilisation would be more successful in instilling prudence and economy into Indian peasants than it has been with Irish or Highland proprietors, the landed classes would probably be ruined before they could be regenerated. As then we cannot count upon any rapid improvement in the defensive power of landholders themselves, we must content ourselves with the alternative of fortifying their position, and probably no better means could be found of effecting this object than those suggested by the paucity of transfers under a system unfavourable to commercial investment in land. The difficulty would be to find some method of preserving to the land its practical advantages as a source of occupation and livelihood, whilst lessening its attractions to mere speculative investors.

Mr. West approaches the subject in so abstract a spirit, and travels over so much ground, that he leaves himself little room for detail; but one of his incidental proposals seems devised to meet the very combination of needs to which my enquiries have led me. His leading idea is to restrict the alienation of land to superfluous possessions; or, in his own words, "a holding exceeding in extent what was necessary for the comfortable maintenance of the family or families, its tenants would be made freely alienable as to such excess" (paragraph 27). The substantive portion of this scheme is probably intended to meet a ryotwari system of tenure, and indeed provision is made in another place (paragraph 35) for the case of "zemindars" or larger landholders. Little stress need therefore be laid on the difficulties which it would leave unprovided for in the upper Indian phase of the land question, and a mere passing mention of them will be sufficient. Perhaps the most obvious objection is that in an unequally constituted and very various society it would often be practically impossible for the Collector to decide what land should be sold and what should not. Proprietors of gentle descent would claim according to their dignity or the number of their dependent relations, and would indignantly repudiate the mere subsistence allowance of a peasant. But passing over these surface difficulties, the scheme would, to my mind, be defective, for the cardinal reason that it failed to prevent the bulk of the land from passing into the hands of mere speculative investors, and that thus whilst protecting the limited proprietary class against starvation, it did little to diminish the chances of discontent,—among landlords from seeing themselves over-shadowed and dispossessed by a despised class—among tenants from sympathy and the fear of further changes affecting them even more nearly. But the machinery by which Mr. West would enforce his scheme would be

equally available for a wider, if not so trenchant a measure. As an alternative to absolute prohibition of sale, he suggests that "the Government should pronounce all land held from it to be subject on alienation to a re-assessment, and to the levy of rack-rent for the benefit of the community". This proposal has not only the merit of going directly to its object, but is also not without a foundation of justice. It is an admitted fact, if not an unfortunate necessity, that if the old proprietors are to be preserved, land revenue assessments must in many cases be personal rather than territorial, that is to say, they must vary with the means and character of the proprietor as well as with the quality of the land. When these concessions fail, as is often the case to prop up improvident owners, it certainly seems unreasonable that the State should be expected to continue sacrifices of revenue, devised to support a particular class of the community, for the benefit of their supplanters. If it was understood that the 50 per cent. margin which had been left to meet the wants of the improvident and growing proprietary communities, would be liable to reduction to 33, or even less, when the land changed hands, a stop would be put to speculative investments in land, and purchases would only be made either for the sake of aggrandisement, or in satisfaction of otherwise irredeemable debts. Here, however, would come in the question whether enhancement of the demand would not, in the long run, injure the very class which it was intended to benefit. A high assessment represents in many districts not only so much money taken out of the particular village, but so much money taken out of the district, to be spent perhaps in a distant corner of the country, or at best on imperial objects very remotely affecting rustic tax-payers. This, however, is a question too wide to be more than cursorily touched upon here, and it may be more to the point to observe the direct results of the enhancement. It is certain that it would not be borne solely by the purchaser. He would try, and probably with success, to transfer the burden to the shoulders of the tenants, and thus not only would the whole community suffer, but the very men who broke down under revenue rates would have to try the experiment of struggling on under exceptionally high rent-rates. Although, therefore, the power of regulating the assessment according to circumstances would greatly diminish the number of transfers, it would, unless hedged round by safeguards, actually aggravate the ill effects of the remaining cases. Such safeguards, in one important branch, it has been the object of the North-Western Provinces Government to provide by recent legislative measures; and under the two Land Acts the power of purchasers to rack-rent will be very much circumscribed. Thus one of the worst incidents of commercial management will be modified if not neutralised; but there will still be wanting some provision against neglect or petty oppression. In villages to which it is worth while to appoint a manager he will have to respect the existing distribution of land, and to give up the hope of unlimited rents, but there will be nothing to prevent the abandonment of poor villages to their own resources, or the constant irritation which is almost always kept up by the mere presence of a bullying agent among a community bound to each other and their land

by the growth perhaps of centuries. In both of these cases the State would be injured as well as the community, not only indirectly from the suscitation of political discontent, but directly by want of a representative village head through whom to communicate with the people. The whole advantage of the proprietary system which we have introduced rests upon the representative influence and means of the proprietors; and the State has a right, in return for the sacrifice of revenue which it has made to establish this class, to look to it for a degree of assistance, which it would be hopeless to expect from most new purchasers. Take the common case of a town banker owning large scattered estates. His manager, where it pays him to keep one at all, has often quite enough to do to get in his rents and keep his skin whole, without venturing on any further interference. If crimes are to be detected, information to be procured, supplies to be got together, education to be encouraged, or any other object of public utility to be promoted, in which the concurrence of the people is required, the district administration is reduced to depend upon an unpopular manager or a sullen tenantry. The case is even worse when a struggling community, too low in the scale to find a leader among its own body, is left without a representative at all. Now, surely we should be justified, not only in the eyes of the people, but according to our own views of equity, in insisting upon the performance of duties for the sake of which the right of property in land has been created. The immemorial custom of the country has associated particular classes with the management of the land, and has assigned to them certain *quasi*-public functions, which proprietors holding by the favour of the State have come to regard as legitimate calls upon them. Commercial investors may not unnaturally take a different view, but after all they can only buy what their predecessors had to sell, and that was proprietary right subject to proprietary duties. These liabilities have been allowed to remain dormant, but neither according to the Oriental theory of land tenure, nor according to the spirit of the system which we have founded on it, would there be any injustice in reviving and enforcing them. Even now a close check is exercised on the power of landlords to select their accountants and watchmen; why then should they have unlimited discretion in the far more important matter of appointing agents on whom the prosperity of the village and the fulfilment of its public duties depend? I think that, considering its heavy stake, both direct and indirect, in the well being of the land and the people, and the sacrifices which it has made to secure these interests, the State would have a full right to make efficient and harmonious management a condition of the proprietary position created by it, and to enforce it, not only by control of the managing agency, but, if necessary in the last resort, by cancellation of settlement. It seems anomalous that landholders should have the power of declining to engage, but that the State should be forced to accept their engagements, without reference to any other of the important interests concerned. Under Native rule the responsibility of the landholder for the prosperity of his village was, I believe, always recognized; and until very lately, at any rate, the form of lease

given by a large landholder to a village farmer in this part of India always comprised the condition that the tenantry were to be kept contented ("raiyat razi rakhe"). Even under our early administration it was not uncommon to take the opinions of the village functionaries and notables on the qualifications of an applicant for the farm or succession of an estate, so that here at least the irresponsibility of the landholder is quite a modern creation. To the people probably nothing can be more unaccountable than that the Government should delegate the whole management of the land, affecting as it does every important interest in the country, to the first comer who has money to buy with. Popular sympathy would certainly not be against us in any attempt to revert to a more Oriental theory of land administration, and if the comfort of village communities could be secured by the suppression of weak or tyrannical agents, and the substitution for them of representative members of the cultivating body; or, if necessary, by the withdrawal of proprietary powers from the defaulting landlord, the last weak point apparent from the view which I have taken of the land question would be guarded. Cultivating communities would be doubly protected by shielding laws and by the representative agency, without which paper safeguards are often little more than dead letters, and the State would reap the fruit of concessions made for the purpose of strengthening the landed interests and enlisting them in the cause of good administration. Nor need there be any ground for apprehending that cancellation of settlement need involve confiscation of property, if the rental charge reserved in favour of the dispossessed proprietor were made sufficiently high to compensate him for the money value of his estate (for there would be no need to allow for loss of privileges and emoluments attaching to the justly forfeited managerial position). It would be a question of fact to be decided separately for different parts of the country what rate of compensation should be taken as the standard for that purpose; but the value of land to which certain duties attached would be of course less than that of the same land held under an absolute proprietary title. Say that five times the jama were selected as a fair standard, and that 5 per cent. on that were allowed as interest, then a dispossessed proprietor would receive 25 per cent. on the annual assessment—an amount which the experience of this part of the country shows would be very willingly paid by the tenantry to get rid of an oppressive landlord, and which, on the showing of many proprietors, would not be very much short, taking bad years with good, of what they now succeed in making only by means of considerable expenditure of time and capital. But this is a matter of detail which scarcely finds a legitimate place in the discussion of remedies for alienation. The adequacy or inadequacy of the standard of compensation on cancellation of settlement only assumes real importance in the case of landowners already in possession, and although my suggestions would apply generally to them also, I understand the immediate issue to be confined to the prevention of *future* alienations and to the case of purchasing proprietors. No dispossessed purchaser could plead injustice, whatever the terms of his ejection, provided that his purchase had been made

with a full knowledge of these terms, and calculated accordingly. To take the most extreme conceivable case, even if it were decided that for the future the State would exercise the right of withdrawing proprietary rights purchased after a fixed date without granting any compensation whatever, it would merely follow that purchasers would make speculative bargains subject to that risk, and would assess their payments accordingly. But though there would be no theoretical injustice in thus dispossessing them, the practical hardship would probably be so generally felt that the rule would become inoperative. Some such standard of compensation as I have suggested would therefore necessarily form part of the scheme; and it seems to me that these two powers, or rather degrees of the same power, viz., (1) the power of controlling the managing agency, and (2) the power, in the last resort, of cancelling the settlement, would not only supply the deficiency in Mr. West's proposal for checking alienation by regulating the assessment, but if that were thought objectionable, would in themselves go far to prevent reckless acquisition of land for speculative purposes. It does not follow that the capitalist, who now seeks to buy a certain return for his money, would be at all so willing to purchase the position of a responsible proprietor; and if, all things considered, he did decide to invest in land, he would do so with the full knowledge of his liabilities, and presumably with the intention of fulfilling them. The mere apprehension of ejection would probably, in the great majority of cases, be sufficient to keep him on good terms with his tenantry, and thus not only would the number of transfers be much lessened, but their ill effects would be materially mitigated.

Mr. West's scheme includes two further proposals—one for the protection of old properties by means of a system of family settlements, and the other for the application of a law of insolvency to the land. The latter suggestion would be defensible or impugnable on much the same grounds as those applicable to the introduction of a general law of bankruptcy which, I believe, has been most exhaustively discussed of late years, and would therefore be beyond the scope of these brief remarks. The project of guarding against alienation by means of voluntary family settlements would unquestionably have a certain effect in keeping together large properties (for it is obviously inapplicable and apparently not intended to apply to other cases); but it seems doubtful whether any measure of the kind could be really efficacious, even in its own limited sphere, which rested on the spontaneous prudence of an apathetic aud improvident class, and which did nothing to weaken the attraction of land for investors. Even now the Hindu law supplies a safeguard against reckless alienations by vesting in sons an interest in the family property; but either carelessness or filial respect or both must be constantly working to defeat the object which the old law-givers set before them, for this provision of the law is very seldom asserted. It may be presumed that, so long as land is one of the most desirable of investments, weak landowners will constantly be assailed by temptations to borrow, and that when their encumbrances have reached a sufficiently

overwhelming pitch, not even the stringent check of a settlement will prevent the younger members of a family from joining with its head in taking any means open to them to stave off immediate annoyance and pressure. If the term of a settlement were fixed for a definite period instead of depending on lives or generations, the inducements to lend on the security of the settled property would obviously be weakened, but even in this case the temptations to money-lenders would revive with the gradual lapse of the embargo on sale. In short it seems questionable whether any merely mechanical obstacle to transfer, short of absolute prohibition, would effectually check alienation; and if so, reformers must seek their remedy in measures calculated to weaken the forces now actively working to break up the old institutions of the country. In the foregoing slight sketch this is the line which I have followed; but there would be no difficulty in drawing from the same premises much more elaborate conclusions than any which I have attempted.

Note by Mr. W. B. Jones, *Officiating Commissioner, Nagpur Division, regarding the measures which should be adopted in order to check the tendency of land to transfer itself from the agricultural to the trading classes.*

(1)—A pamphlet "The Land and the Law in India", by Mr. Raymond West.

(2)—Mr. Grant's Memorandum.

When the papers noted in the margin were first sent to me for opinion, I proposed to myself to prepare a brief resumé of all that has been written of late years regarding the transfer of land from the old agricultural to the new monied classes. The question being one of much complexity I thought that it would be impossible to treat it with all requisite completeness without the aid of those side lights which long discussion has thrown upon it. I much regret that I have not found time to carry out my first intention, and that I can claim for the recommendations contained in this Note only such attention as may be due to my individual opinion. The subject, however, is one in which I take much interest, and I am very glad to have so good an opportunity of expressing my opinion regarding it.

2. Before proceeding further it may be well that I should state what appear to me to be the chief conditions and limitations under which the subject in hand has to be discussed, and I desire to do this at the very commencement of this paper in order to show that I shall at least *endeavour* to regard a most complicated question from a sufficiently broad point of view, and that I am fully aware that the Chief Commissioner's acceptance of the proposals which I shall have to submit further on will depend on my being able to make it clear that they do not tear too large a hole in our revenue system, and above all that they do not set at defiance any of the recognized principles of Political Economy.

I would premise then—

I.—That in the changes we may introduce, we must endeavour to avoid the suspicion of not keeping faith. Some breach of the terms of the settlement is probably unavoidable, but it must be as slight as possible and must be such as to convince the people we are seeking their welfare only and not our advantage.

II.—We must be most careful not to destroy landholders' credit, *i. e.*, the legitimate and healthy power of raising money for the improvement of their estates, for pressing family necessities and for the payment of the Government demand.

III.—Neither must we interfere with the legitimate and healthy flow of capital to land. Happen what will, we ought not to adopt any measures, the effect of which will be to keep the land in the hands of one class when another class is better able to use it. We must not maintain an aristocracy of pauper landlords.

IV.—We must distinctly recognize the fact that the mere exemption of land from sale in execution of money decrees would be an altogether insufficient remedy for the evil we have to encounter. This is a point which is often overlooked in discussions on the subject now in hand; and one may surmise that it was overlooked by the Government of India when in extending the Civil Procedure Code to these Provinces it directed that the civil courts should obtain the sanction of the Judicial Commissioner or Commissioner before proceeding to the sale of ancestral and acquired land respectively.* Mr. Grant has shown very clearly how practically useless this proviso is. It cannot be too clearly understood that a landholder whose standing crops and farm produce are constantly attached for a debt which it is beyond his power to shake off, is just as effectually ruined as one whose land passes from him altogether. In both cases sale must take place sooner or later, and when this is the case the sooner sale takes place the better it is for all parties. Portection to landholders to be effective must protect their estates against civil process altogether, and the question for consideration therefore is how such protection may be extended to them without infringing the terms of settlement, destroying credit and interfering with the legitimate and healthy flow of capital towards land.

* In subsequent paragraphs of this paper I shall for the sake of brevity refer to this proviso as the 'Oude clause'.

3. Although I propose to follow Mr. Grant's example in assuming that the State ought to interpose to check the present *unhealthy* tendency of land to transfer itself from the old landholding to the new monied classes, it may not be out of place for me to explain briefly the position in which these Provinces stand with regard to the question in hand. Up to the present time* we have had comparatively few sales by decree of court, certainly not enough to create anxiety or to justify any fundamental changes in

* *See* Mr. Melvill's memorandum attached to letter No. 741—90 of 14th April 1871 from the Secretary to the Chief Commissioner, to the Secretary to the Government of India, Home Department.

the law affecting the liability of land for debt. If we could suppose that our present immunity from compulsory sales would continue, the question we are considering would be of the very least importance. But the fact is that although owing to the circumstance that proprietary right has been but *recently** conferred, compulsory sales of land have been hitherto infrequent, we find that such sales are becoming yearly more numerous, and *knowing how greatly involved a large proportion of the landholding families are we predict with certainty that before many years are over compulsory sales will become as numerous, and the evils they bring with them as pressing as they are in other parts of India.* The widespread, and one may fear increasing, indebtedness of our agricultural classes is the *raison d'etre* of the present discussion.

Paragraph 2 of Secretary's letter quoted above.

* In some districts, *e. g.*, Chanda and Nimar, the settlements have not even received the sanction of Government.

4. In order to illustrate this part of my argument, I may take the case of Bhandara, a district in this division in which fortunately the extent of the indebtedness of one, and as may be safely assumed the most opulent section in the agricultural community, viz., the malguzars or full- proprietors, is known with tolerable accuracy. The result of a special enquiry made in this district by the order of the late Officiating Chief Commissioner was to show that the malguzars of 239 out of 1,182 villages are in debt, and that all but 35 of them are involved beyond all hope of extrication. The Government jama in the encumbered villages being Rs. 75,397 and their aggregate profits being Rs. 45,693, the amount of debt admitted by the malguzars (and, as Mr. Pedder pointed out, their estimate as debtors is certainly below the truth) reached the sum of Rs. 3,05,945, an amount which, as it has been borrowed at high rates of interest, will inevitably bring all but a few of the involved villages to the hammer within a very few years. The Bhandara District is probably the least agriculturally prosperous district in this division, but there are other districts in the Provinces the malguzars of which are supposed to be at least as much involved, and it must be remembered that in the three lakhs of debt above mentioned, the debts of plot-holders and holders of transferable tenures are not included.

5. Taking one district with another, and using the ascertained facts of Bhandara to assist the judgment, I believe I shall be within the mark in asserting that at the present moment 15 per cent. of the entire landed property of the country will be lost to its present owners within the space of three or four years. This state of things must be regarded as serious from any point of view, but it becomes matter for grave anxiety when we remember that as far as we can tell there are no signs that the landed classes are extricating themselves from their entanglements. The high price of cotton during the American war did an immense deal to free the agricultural classes of the Wardha and Nagpur Districts, and the high prices of grain have greatly benefited the Narbada Valley population ; but, notwithstanding these favourable circumstances, it is, I believe, the opinion of most officers that indebtedness

has of late years increased rather than diminished, or that the liberty to involve themselves granted at the settlement has done more harm to our half educated and improvident agriculturists than light assessments and favourable prices have worked them good.

6. In trying to determine whether agrarian indebtedness is in fact increasing or diminishing, one is very liable to be led away by the sympathy which individual instances of ruin excite, and it may be that I have exaggerated the real state of the case. I feel confident, however, that more officers would draw a darker picture, and that I am not far out in asserting—

(1)—That the owners of 15 per cent. of the entire landed property of the country are on the brink of ruin.

(2)—That as yet there are no signs of improvement, and that astonishing as it may seem, the owners of land grow poorer while their land is daily rising in value.

I would, however, strongly urge that the enquiry made in Bhandara should be extended to other districts in the Province. The matter is one regarding which information can be easily gained, and we ought not to legislate in the dark. At present all is conjecture.

As an instance of the danger of relying on mere conjectural estimates of agricultural indebtedness, I extract from paragraph 3 of my predecessor's letter No. 4528 of 22nd October 1872:

"PARA. 3. In the first place I am glad to be able to acknowledge that I have considerably exaggerated the proportion of indebted landowners, and the extent to which they are involved. Something over one-sixth of the villages of the district are involved in debt, and in no pergunnah does the proportion of indebted malguzars approach 90 per cent., the proportion which the enquiries I was able personally to make while on tour led me to believe might be found to exist." * * *

7. In the preceding paragraph I have endeavoured to show that although sales of land by decree of court have hitherto been few in these Provinces, yet that there is good reason to believe that the question discussed in this paper is one of as much importance here as it is in other parts of India, and that therefore the interference of the State to prevent unhealthy transfer of land from the old landowning to the monied class is not less necessary here than elsewhere. I will now state very briefly the particular reasons which appear to me to justify an interference which appears at first sight objectionable both on legal and economic grounds. I shall assume in what follows that a more extended enquiry regarding the indebtedness of the landed classes will confirm the opinion which I ventured to express in the preceding paragraph regarding their present condition and prospects.

8. The political evils of a sudden supplanting of one class by another in the possession of land are so obvious and so widely recognised that I shall not attempt to insist upon them. They supply the very strongest *motive* for the State to interfere, but taken alone can scarcely be considered to afford a complete *justification* for its interference. I would defend the intervention of Government on two principal grounds, —*first*, that the landed class does not meet the monied class on equal

terms* and is certain to lose in the contest of chicane through which the baniya fights his way to the land. *Second*, that the baniya landlord puts the land he acquires to worse and not to better use than the landlord he supplants. Considerations of equity, on the one hand, and of economic advantage, on the other, call for the interference of the State. The baniya is by almost universal admission a bad landlord. He buys the land not to keep and cherish it as the perpetual possession of his family, but simply to make the utmost out of it; investing capital in it is the last thing that occurs to him. It may be that the Hindu system which attaches caste to profession and confines profession to caste has left the baniya with an hereditary incapacity for agriculture, but it is undoubtedly true that he does not take kindly to the labours and duties of a landlord, and that when he acquires an estate does so too often only to drain it dry.

* This has been admirably put by Mr. West in his 9th and 22nd paragraphs.

9. But even supposing for argument sake that it cannot be *demonstrated* that the supplanting of the old landed by the trading class is an economic evil, I would urge that the mere statement of the fact that, not only in these Provinces but wherever our rule extends, one of the largest and most deserving classes of our subjects is found to lose its ancient place in the social economy, and go swiftly to ruin, ought to suffice to prove to us that whether political economy appears to one to command interference or not, it would do so if we could perceive all the conditions of the problem. On the face of the question, the class which our rule destroys must be more sinned against than sinning. We cannot draw an indictment against half the people of India, and we may be quite sure, whether we can see it or not, that we and our institutions are in the wrong and not they. There is but too much truth in Mr. West's remark* that being foreigners and therefore but little pervaded by the current sentiments and necessities of our subjects, we fail in instinctive perception of what is for their good and obstruct that spontaneous reception of what is beneficial and expedient which sustains and guides nations as much as living organisms in their growth.

* *See* Mr. West's paragraph 15.

10. I now proceed to consider the means by which the illegitimate and unhealthy alienations of land may be prevented. This part of the subject divides itself into two branches. We have to enquire first what measures we should apply to prevent unhealthy alienations *in the future*, *i. e.*, alienations resulting from encumbrances contracted after the promulgation of the new rules or laws, whatever they may be which we may decide on accepting; second, what means shall we take to save landholders from the effects of obligations already contracted. These two branches of the enquiry are quite distinct and can be most conveniently considered in the order in which I have stated them.

11. With regard then to the measures which we should adopt in the future, a great number of proposals have been made, some tell us to

strike at the root of the evil and prevent landholders from running into debt;* others would rely on the Oude clause; others again would take their stand on those doctrines of Hindu law which made owners little more than tenants for life and restrict their power of alienation. The proposals which I shall hereafter make will accord with none of these suggestions; the third was referred to in paragraph 11 of Secretary's letter No. 741—90 of 14th April 1871, to Secretary to Government, Home Department, but I do not feel able to insist upon it when a jurist of Mr. West's experience gives it up: the second is, as has been shown, but a broken reed, and the first I can only indirectly fall in with. My proposals will certainly restrain malguzars from getting into debt, but they will do so by preventing them from encumbrancing their lands except for legitimate purposes. We shall no doubt do something by education to teach prudence, but devices such as that which I have quoted by way of example from a current Indian periodical strike me as likely to be ineffectual, not to say positively injurious in their operation.

* For example, *Indian Observer*, August 30th, where assessments varying with the harvests are proposed.

12. But before explaining my own scheme, I propose to summarise those of Messrs. West and Grant, and to state the points in which I assent to and differ from the conclusions at which they have arrived.

Mr. West then proposes—

(1) To forbid courts to decree compound interest, and thus give creditors no inducement to let their debtors get hopelessly involved.

(2) To give civil courts discretionary power to reduce stipulated interest on claims below Rs. 500. This limit is intended to mark a rough line between transactions entered into by obligors presumably able and not able to contract on equal terms with obligees.

After these preliminary suggestions Mr. West proceeds to dwell on the "protective ownership" of the State in land, and to deduce from this source the conclusion.

Paragraph 27.

(3) That Government should either declare all land held from itself inalienable without its consent or subject on alienation to re-assessment and to the levy of a rack-rent for the benefit of the community; and in order to give effect to this principle he proposes—

(4) To draw up rules exempting from sale and process the minimum holding (with all appurtenances, such as plough, cattle, farm implements, &c.) necessary for the comfortable support of the debtor. In Mr. West's words "the working of the plan would be this. A ryot desirous of selling or incumbering his holding would make an application jointly with the proposed purchaser for permission to do so. As to the excess above a certain quantity the Collector would immediately grant permission. As to the minimum he would carefully consider the circumstance and allow or disallow sale. He would generally refuse to permit the

splitting up of a small holding unless something had given it an exceptionally high value. Where there was any indication of the cultivator being imposed on, or unduly pressed, he would refuse his sanction altogether. Thus the ryots would be kept on their land except when it was plainly advantageous that they should transfer them, while changes of proprietors would not be prevented in proper cases. Orders for the execution of decrees against land should be sent to the Collector, and should be carried out only against land held in excess of the minimum."

Mortgages Mr. West would treat in the same way as sales, and leases for more than one year he would make subject to the Collector's approval. In paragraph 33 the question of execution against property held in common is dealt with, and in Section 34 a proposal is made for preventing a division of land into fragments smaller than the recognised minimum requisite for the support of a family.

Paragraph 30.

13. The above are Mr. West's proposals for preserving the position of the smaller landholders, men I presume such as plot-holders are in these Provinces. For the preservation of the class of landholders whom we should call malguzars and zemindars, he proposes a system of family settlements securing their estates against the chance of recklessness for at least one generation. He would allow the "owners of land with the concurrence of those if any whose assent would be necessary for a sale to make a voluntary settlement for a life and a majority beyond his own or else for a definite period of 50 years".

Paragraph 37.

14. Lastly, Mr. West would look to an insolvency law to supplement his scheme by providing for the punishment of criminal recklessness or fraud in incurring debts.

15. Mr. Grant commences his paper by remarking that the whole question arises from "the effect of our system in converting the possession of land from its former function as the occupation of a class into a mere investment for capital", and after pointing out the futility of the Oude clause, records his opinion that even an absolute veto on alienation would be evaded; that the flow of capital to the land must be stopped by quite different means, and that the only way to attain the end is to alter the conditions under which land can be bought and sold. He then proceeds to recommend that firm hold should be taken of the principle that no absolute proprietary title in land can be recognised in India, and that the duties of property should be insisted on as well as its rights. He would regard the diminution in the value of landed property consequent on the adoption of his proposals as an advantage if it indicated a tendency to regard the possession of land rather as a source of honour and comfort than as a mere commercial security, and would look to the principle laid down by Mr. West that land on alienation shall be subject to re-assessment and to levy of a rack-rent for the

benefit of the community to supply the motive power for his final proposals, viz.—

(1) To assume a full power of control over the managing agency of alienated estates.

(2) In the last resort, *i e.*, in default of "efficient and harmonious" management, to cancel the settlement, reserving, however, a rent charge of one-fourth the jama in favour of the ousted proprietor.

16. In support of these proposals Mr. Grant remarks that settlements are often made light on personal grounds, and that it is unreasonable to ask Government to continue to purchasers privileges which were granted personally to the sellers. He also insists much on the evil effects which follow on the management of villages by agents of absentee bankers, and urges that it is hopeless for the State to expect from mere managing agents the advantages which it is the great object of our revenue system to attain, viz., the representative influence and means of ancient proprietors. Proprietary liabilities, Mr. Grant remarks, have been allowed to remain dormant; they should be revised and insisted on.

Family settlements, depending on the spontaneous prudence of an apathetic and improvident class, would, in Mr. Grant's opinion, be useless. In short, he expresses his conviction that if we would make our measures effective, we must not rely on any merely mechanical obstacles, but must diminish the attractiveness of the land to the capitalist.

I have attempted to summarise Mr. Grant's proposals at some length, because, though I differ from his conclusions, I am anxious to express my concurrence both in his statement of the origin of the difficulty which we are discussing, and in his plea for a firm insistance on the now dormant proprietary liabilities.

17. Mr. Grant's scheme appears to me to be open to the following objections :

(1) It would do too much : it would destroy the value of the gift of proprietary right made at settlement, and reduce the value of all landed property to a grievous extent. It seems to me that no purchaser would buy when he knew that his tenure would depend on the disposition of the Collector (an official almost certain to regard him with an hostile eye), and on his ability to enjoy the profits of his estate, and at the same time live "harmoniously" with tenants whose sympathies would all be with the proprietor whom he had ousted. I cannot too strongly express my concurrence in Mr Grant's recommendation that proprietary liabilities should be fully insisted on, but then I would say let them be enforced in the case of all heads of villages alike and not held *in terrorem over the heads of purchasers only*.

(2) To make harmonious management a condition of a tenant would, under our system, be impossible. With us the only question that can be asked is—Does the manager exceed his rights ? If he does not, no

amount of dissatisfaction among tenants could warrant interference. Besides, if it were only known that inharmonious management would be fatal to the manager, tenants would have the fate of the manager in their own hands. There is but one kind of harmony which under our system can be insisted on, viz., observance of mutual rights and liabilities.

(3) The remark that Government cannot be expected to maintain to purchasers rights personal to sellers has but limited application in these Provinces. It is also clear that the seller, and not the purchaser, gets the benefit of such privilege; the one receives it, and the other pays it, in the sale price.

(4) A grant of a rent charge of 25 per cent. to ousted purchasers would be, I should think, fatal to the property of most estates.

(5) Although Mr. Grant's proposals would put an effective, if not a complete, check on sales of land, they do not appear to provide protection against the equally ruinous effect of attachments and sequestrations of profits. The effect, therefore, might be to leave landholders with all the miseries of hopeless entanglement without securing for the community generally the advantages which result from the transfer of estates from insolvent to solvent proprietors. If we place restraints on alienations, let them, I would say, be perfectly clear and definite; restraints which, like the threat of cancelment of settlement, are indefinite in their nature depreciate the selling value of land by their vagueness and uncertainty. Purchasers who do not know what their exact future position will be will either abstain from buying altogether, or will offer sums greatly below the intrinsic value of the property they purchase.

18. I have ventured thus freely to criticise proposals summarised in the above paragraph, because I learn that all these papers will be referred again to Mr. Grant for a final opinion, and he will have an opportunity of correcting me on any point in which I may have misapprehended the scope of his recommendations. I will now explain my own proposals, and shall do so with the more diffidence, because I see how open to criticism are the proposals of others whose knowledge of the subject is at least equal to my own.

19. I would then offer the following suggestions for the Chief Commissioner's consideration :

I.—I would allow all landholders to sell their land outright, without let or hindrance, and would confine State interference to securing them against incumbrances to operate in the future. But I would make all sales voidable until possession had been given, or until the parties had appeared before the Collector and had proved to him that the sale was *boná fide* and not a mortgage in disguise.

II.—I would declare ancestral land exempt from civil process except in respect of debts expressly certified against it as provided in the next rule.

III.—I would require lenders desiring a lien on ancestral land as their security to appear before the Collector with the borrowers and ask him to certify the debt to be a proper debt to be allowed against the land.

IV.—I would supplement the remedy provided in Rules II. and III. by permitting family settlements in the manner proposed by Mr. West.

V.—I would place no restriction on the acts of parties or the action of the courts in the case of acquired land.

20. As Mr. West has fully explained his proposal for family settlements, I shall merely remark that I do not concur with Mr. Grant in thinking that they would be ineffective* (the Collector might be made a party to the settlement if there were any fear of this), and that I believe that they would be hailed by the people with delight and would do more to add popularity to our institutions than almost any other measure we could adopt. The feeling of the people is for something that shall give permanence to their families, something that shall enable them to secure themselves against the recklessness or weakness of their children. India is now (to borrow an illustration from the author of Notes on Indian Affairs) much in the position in which England would have been if in the days of Richard I., when our nobility were all in debt to Jews for money borrowed for tournaments and crusades, she had been conquered by an African nation proud of its civilisation and bent on giving her the benefit of economic principles which it had found to answer at home. Had such an event occurred, civil courts would soon have done their work in transferring the land to the Jew (as Mr. Bernard remarked the Marwari is the Jew of India), and the healthy spontaneous development of a great people would have been stopped.

* The readiness with which life pensioners have surrendered half their incomes in order to secure smaller perpetual pensions to their families is a strong fact in Mr. West's favour.

A rich banker of Jabalpur once came to ask me to show him some means by which he could tie up his money for one life, and expressed his readiness to invest one or two lakhs, I forget which, in Government securities if this would aid his purpose. So strong is the feeling to which I refer that I believe that if the privilege of family settlements were attached to money invested in Indian securities, the bulk of the debt of the country would pass into the hands of Natives.

21. Hindu institutions formerly did the work which the power of entail did in England, and I am convinced that if we would avoid violent social revolutions disastrous alike to our subjects and ourselves, we must provide something to supply the place of the institutions we have superseded. I have no "fancy for reconstructing Native Indian Society upon a purely Native model", but I see that "our unintended influence metamorphoses and dissolves the (ancient) ideas and social forms, and that there is no expedient by which we can escape the duty of re-building upon our own principles that which we unwillingly destroyed". The complaint which Natives of Oudh made to

Village Community, page 27.

Sleeman "that four times more of their ancient families had gone to decay in the half of the territory (Oudh) made over to us in 1801 than in the half reserved by the Oudh Sovereign", is one the like of which we may hear in too many parts of these Provinces. If we would free ourselves from such reproaches, we must cease to Americanise, and adopt measures like Mr. West's family settlements which shall recommend themselves to the instinct of the people as well suited to the transition state in which they now find themselves.

* (Oudh, Vol. I., page 164.)

22. The working of the plan suggested in proposals II. and III. above would be this:

An owner of land desiring to raise money on its security would appear with his lender before the Collector,* explain the nature and terms of the loan, and apply for a certificate stating that the object was one on account of which the land might be properly encumbered. The certificate would be granted at once for loans required in order to improve the estate, to buy seed, pay the Government demand, or to meet pressing family necessities, it would be refused if its object were to raise funds for extravagance at marriages, &c. If the duty of scrutinizing applications and granting certificates were entrusted to the Registration Department, the work could be done without imposing much labour on Government officials or trouble on applicants, and as a collateral advantage we should obtain a complete knowledge of all the encumbrances affecting land all over the country. When a certificate had once been given, I would let the civil courts deal with the land with as much freedom as with moveable property. Until it had been given, I would not let them issue process against it at all.

* I include under Collector, Assistant, Tahsildars and such other officials as it might seem fit to entrust with the duty of receiving these applications.

23. The proposal here made is very similar to Mr. West's (paragraph 28), but I think much more easy of practical application, and I would submit that it will effectually secure the landed classes, while it will maintain intact the axioms which at the outset of this paper* I laid down for my guidance. It will scarcely affect at all the value of the gift of proprietary right made at settlement. A landowner may at any moment sell every interest he possesses in his land, he is only prevented from encumbering it to his own future ruin, his credit is not affected in any matter in which credit is necessary, and, lastly, the courts are left unencumbered by incongruous extra-judicial restrictions (such as the Oudh clause), the proper application of which they are quite unable to determine.

* (Paragraph 2.)

24. It would, no doubt, sometimes happen that the Collector would be deceived as to the object for which an encumbrance might be effected, but the man who, after the warning he would receive, chose to raise money on false pretences would deserve and should get no mercy. The system would probably work somewhat as follows: Suppose (X.)

to be the amount of a landowner's personal credit, *i. e.,* his credit irrespective of his land, (Y) the amount raised on the security of his land under the Collector's certificate, and (Z) the entire selling value of his land, then his indebtedness at any given time would at the worst be X + Y, and until the Collector saw fit to allow Y to rise to Z, *i. e.,* to the full value of the estate, he would always have an unencumbered interest in his land represented by Z—Y. The creditor would of course take care that all payments should be credited to X rather than to Y, but the debtor's worst efforts to ruin himself would be unsuccessful as long as a good margin were maintained by the Collector between Z and Y.

25. The first of the proposals made in paragraph 19 allows the freest circulation of land while it secures that the vendor shall not be blinded by any secret promise, such as Mr. West mentions in paragraph 29. Rules II. and III. provide that no kind of contract, engagement or encumbrance affecting land and operating *in the future* shall be entered into except under the Collector's sanction. I do not pretend to base these proposals on this or that principle. I do not concur with Messrs. West and Grant in their proposal that the State shall declare alienated land subject to re-assessment. Such a declaration is in my judgment more than the necessities of the case require. It makes a needlessly large breach in the Settlement compact. I am content to claim attention for my proposals on the lower ground that State interposition being necessary (paragraphs 8 and 9 above) they provide for such interposition without doing violence to the settlement compact or to the principles of economic science. If they are sanctioned, healthy transfers of land will continue, while unhealthy transfers, the offspring of chicane on the one side and improvidence on the other, will be effectually arrested.

The principle of my proposals, viz., the right of the State to control *future* encumbrances, has been already recognized in the Pension Act.

26. I do not propose to discuss the suggestions which Mr. West makes for reducing interest and for an insolvency law, since though they have a most immediate and important bearing on the question in hand, they lie somewhat outside the main lines of the discussion. I shall therefore proceed at once to the second part of the subject, viz., to the consideration of the measures which should be taken for the relief of landholders who are already involved. In dealing with this part of the question the Oudh clause, futile as it has hitherto proved itself, becomes of real and practical importance. Although judicial authorities have not succeeded in interpreting the clause in a sense beneficial to debtors, it is perfectly certain that the Government of India intended that it should have some practical meaning, *and that the money-lending classes have entered into their dealings with the full expectation that substantial effect would be given to it.* We need not hesitate therefore to take our stand on this clause, and to make it the foundation of a new, effective and equitable scheme of protection.

27. There are two classes of cases to be considered—first, debts not expressly secured on land; second, debts for which land has been expressly hypothecated. The first class of cases is discussed by Mr. West in his 32nd paragraph, and with regard to them I would merely state that, while I should probably concur in his view under any circumstances, I think that we in these Provinces with the Oude clause before us may unhesitatingly accept it. Future decrees for such debts should not be executable against land; at the same time Collectors might be advised to allow debtors desiring to do so to cumber their land with the payment of such debt whenever this course might appear equitable.

28. To meet the case of the other class of debts much more is required, and here again the aid of the Oude clause must be called in. It would protract this paper to too great a length were I to make detailed proposals for the treatment of these encumbered estates, but the following is an outline of what I would recommend:

I.—I would assign to the Oude clause what it should have had all along, and what creditors must have expected that it would have, viz., some meaning substantially beneficial to indebted landholders. The Judicial Commissioner in paragraph 10 of his Book Circular XI. of 1872 has ruled that after a sale of land has been vetoed, the court will still keep the land under attachment; and it follows, therefore, that if the profits of the land are not considerably greater than the interest on the debt, the case of the landholder is as hopeless as ever. He can never get free, and some time or other sale must take place. I would propose to make every Deputy Commissioner a kind of encumbered estates court for his district, and empower him under rules to be laid down for his guidance to make enquiry regarding the nature of existing land secured debts, and to determine the fair amount of debt at simple interest. For the amount thus determined the debtor's land should be liable. With respect to the amount cut off as excessive interest, &c., I would declare it exempt from process of court. This excess amount the civil courts might of course decree, but the decree would not be executable against the land. The proposal here made does not, I would submit, exceed what the Oudh clause entitles Government to ordain, or what it (its futility in the hands of judicial officers has only lately been apparent, and has not therefore affected dealings) led creditors to expect.

II.—Debts having thus been scrutinised by the Deputy Commissioner, I would at once sell all estates, the profits of which might not suffice to pay interest on the amount determined by the Collector, and to clear off the principal in a reasonable time. For all other estates I would let the Deputy Commissioner make the best arrangements he could.

III.—I would compel no one to bring his estate into the encumbered estates court, but every landholder who chose to submit to it should resign his land absolutely to the Deputy Commissioner to treat it as he might deem best.

IV.—I would provide for the grant in special cases of loans from Government. In the Narsinghpur District at the present moment men who did us *recent* and important services are sinking to ruin. Such men the sentiment of the country requires us to rescue.

29. My proposals for arresting the present unhealthy tendency of land to transfer itself to the capitalist class are now complete, and I have only to add two final recommendations—

(1.) That any legislation with the object of preventing landholders from encumbering their land for illegitimate objects should be avowedly a temporary expedient. The need for such legislation will disappear as education spreads. To use the words of the Secretary's letter referred to above, special measures are required "to bridge over the interval between the old state of things and the new".

(2.) I would express my hope that some speedy decision may be come to. Whatever is done should be done quickly. Every day increases the difficulty of moving at all.

In paragraph 12 of Colonel Keatinge's letter this aspect of the question was pressed on the Government of India. What is now easy will in a few years become difficult, and for this reason, if for no other, I would urge that Government should not delay. I do not say to act, but to decide whether it is expedient to act or not.

Second paper on the land question by Mr. C. GRANT, *Commissioner, Jabalpur Division.*

IN my first paper I sketched what struck me as the radical causes of the present frequency of land transfers, and suggested measures which would have a remedial effect, assuming my identification of the evil to be correct. Briefly, the conclusions to which I came were that, owing to increasing competition in trade, the old capitalist classes were beginning to find land on the whole the best investment for their money, and that thus the inducements to lend, and therefore to borrow, on land had received an unhealthy stimulus. As a consequence land was passing from the class which, in the fixed order of Indian society, had a natural aptitude and love for its management, into the hands of men who regarded it as a mere source of interest, and who therefore neither fulfilled to their tenantry, nor to the State, the duties which Indian custom has attached to the proprietary or *quasi*-proprietary position. Following out this train of ideas, and guiding myself by the analogies of the pre-proprietary period in these Provinces, it seemed to me that the true direction in which to seek a remedy was not in mere mechanical expedients, such as prohibition of transfer, which, operating only from the outside, would never impose any substantial check on the growth of a deep-seated evil, but in an attempt to find some means of withdrawing from the land its attractions as a mere investment, without materially lessening its value as a source of livelihood to proprietors of the agricultural classes. It occurred to me that this object might be attained by

a firmer insistence on the duties of proprietorship, which, however thoroughly recognized in all theories of Indian land tenure, had nevertheless been so disregarded in practice as to be without appreciable effect in determining the commercial value of land. Capitalists who would be ready enough to invest in land as a mere unencumbered commodity might hesitate before laying out their money to attain the position of responsible proprietors, liable on the one hand to the State, and on the other to the tenantry. These liabilities might, I thought, be enforced, in the last resort, by cancellation of the settlement compact, compensation being granted to the dispossessed proprietor by a fixd percentage or "malikana", which need not weigh unduly on the village rental if calculated only as the equivalent of the net rental profits, omitting the perquisites and privileges of the justly forfeited proprietary position. The advantages of a project framed on these lines would be not only that the remedy, being directly suggested by the evil, would be more effective and thorough than any mere external treatment of symptoms, but that it would also include in its scope the welfare of the non-proprietary cultivating classes, and would thus be a really comprehensive measure of land reform, instead of a mere device to check land transfers. It is not to be denied that even a limited measure of the latter class would have some effect in promoting the well-being of tenant-cultivators, for old landlords are ordinarily and naturally more lenient than purchasing speculators; but as the commercial spirit day by day increases, old relations must gradually dissolve; and the State, in its capacity of sleeping partner in the land, will need a stronger guarantee than custom and hereditary good feeling for the security and privileges of the great cultivating classes. If it be found possible to guard the interests of the State and of the tenantry by the means devised for the protection of the landlord, who is the connecting link between them, a real advance would be made towards the solution of the difficult land question.

2. My suggestions have been laid before Mr. Jones for criticism, and he comments upon them in the paper to some parts of which I shall now reply. I shall attempt to do so in the briefest possible manner consistent with clearness, for the whole value of such a discussion as this depends upon its being brought within sufficiently close limits to admit of its main points being readily and quickly grasped by the authorities to whom it must be eventually submitted. I therefore omit all reference to the historical aspects of the subject, assuming it to be sufficiently clear that measures to check over-alienation are needed; and I further take it for granted that the principles with which Mr. Jones prefaces his commentary will command universal acceptance, at any rate from all who are, or who are likely to be, parties to the present enquiry; and that the only questions, if questions should arise, will be how far particular projects or suggestions accord with and give effect to those principles. Passing on then to the portions of Mr. Jones' paper more immediately bearing on the points at issue, I come first to his comments on my suggestions, the groundwork of which, I am glad to say (though not the resultant conclusions),

has his assent. In his own words: "I am anxious to express my concurrence both in his statement of the origin of the difficulty which we are discussing, and in his plea for the now dormant proprietary liabilities", and again: "I cannot too strongly express my concurrence in Mr. Grant's recommendation that proprietary liabilities should be fully insisted upon". From this point, however, Mr. Jones parts company with me, and goes on to point out that though my proposals would put an effective, if not a complete, check upon transfers, they would only do so at the cost of undue depreciation of landed property. In reference to my suggestion that proprietary liabilities should be enforced, if necessary, by cancellation of settlement, he points out the difficulty of attaching definite penalties to anything short of definite infraction of rights; and he remarks that the rate of allowance or "malikana" proposed for dispossessed proprietors would be so high as to be fatal to the prosperity of most estates. He thinks my remark that as assessments are often personal rather than territorial, that is calculated rather with reference what to the landholders can afford than the market value of land, has but a limited application in these Provinces; and that in any case it is the seller, and not the purchaser, who gets the benefit of this concession, as the one receives it and the other pays it in the sale price. Lastly, he observes that although depreciation of the selling value of land, by revival of the now dormant proprietary liabilities, may check sales, it would provide no protection "against the equally ruinous effect of attachments and sequestrations of profits".

3. Mr. Jones goes on to record suggestions of his own for remedying the evil with which we have to deal; and these I will discuss presently, merely observing here that with the fullest admission of the value to me of his comments in indicating the weak points of my scheme as they strike a most fair and competent critic, I am inclined to think that, both in his comments and in his projects, his assent to my premises should logically carry him further in my company than it has done. Mr. Jones seems heartily desirous that proprietary liabilities should be enforced, and I ask for no more in order to diminish the attraction of land as an investment, and therefore to check unhealthy transfers. But a prohibition unsanctioned by a penalty can have little, if any, force, and it is obviously of no use to protest against abuses unless we are prepared to enforce our protests. The nature of the penalty employed is a matter of minor importance to the success of my suggestion; all that would be required is that effectual means of some kind should be taken to enforce the landholder's liabilities. In that case my idea is that the position would no longer be sought after by the mere investor, though it would lose little of its value to the hereditary agriculturist whose inherited instincts centre rather on the dignity and comfort of village headship than on the hope of amassing a fortune, and almost forbid him to ignore the terms on which the State has taken him into partnership. It is quite possible that some among the breaches of the settlement compact implied or expressed, of which a landlord may be guilty, would be more suitably met by some other penalties than that

which I have suggested; and, if so, my object would be best attained by adopting them. On the whole, however, it seems to me that failure to carry out the conditions on which ownership, or, more exactly speaking, proprietary partnership, has been conferred, can in no way be visited more appropriately than by re-opening and revising the agreement as a whole. I think that the really difficult idea for an English mind to grasp is that of property subject to constant, variable and not always distinctly definable burdens; but that is a condition not only familiarised by Eastern custom, a recommendation to which we might err in giving too much weight, but also to my mind inseparable from the limited proprietary title which is all the State has hitherto been able or willing to concede in the temporarily settled Provinces. So long as the State takes the lion's share of the rents, it is, simply in its capacity as a part-landlord, and putting aside all political considerations, vitally interested in the well-being of proprietary communities; and its responsibilities for the many public duties attaching to the land are, if not enhanced, at least made more intimate and direct than they would otherwise be. These functions it can only perform through its working partners—the landholders—and hence arises not only the duty, but at times the necessity, of bringing authority to bear on questions which, in a more advanced state of society, may be left to settle themselves. Of course on whatever theory administration may be conducted, it will be desirable to guide authoritative interference as far as possible by rule; and I do not see why if it be once admitted that the tenure of the land in India carries with it special and peculiar liabilities, the duties thence springing should not be pretty closely defined. Our relations with landholders avowedly turn on contract. We agree to settle estates with them on certain terms which are embodied in the village administration paper, and the chief of which are, on the one part, perpetuity of tenancy, on the other, full and regular payment of a share of the rents fixed for long periods, but variable at the pleasure of the State, on determination of the lease. Now in practice this latter condition is the only portion of the compact which the State ever seeks to enforce against its lessees or partners; but if it be conceded that other public duties which the custom of the country imposes upon landholders are little, if at all less, important than the regular payment of revenue, there seems to be nothing opposed either to equity, or to the doctrines of political economy, in taking the same means of enforcing them. I did not attempt to go into details in my first paper, and hence I seem to have misled Mr. Jones into thinking that I proposed to give Collectors the power of interfering to cancel a settlement whenever a landlord was unable to get on with his cutivators. This, however, was very far from my real idea. What I think is that certain conditions might be laid down at the settlement, and that breach of these conditions might be visited with cancellation of settlement as justly as failure to pay the Government demand or refusal to accept a revised assessment. It would undoubtedly require great care and judgment to test and define shortcomings of this class with accuracy; but I do not think it would be impossible to bring

them sufficiently under rule for all practical purposes. For instance, it is impliedly, and might be made expressly, part of the settlement compact that the estate should not be allowed to fall off. Observance of this condition might be tested *primâ facie* by the revenue history of the village, which is always carefully compiled by the settlement establishments, and it would then be a question for the settlement judgment, and one no more difficulty or delicate than many on which it has to adjudicate, whether the deterioration has been due to mismanagement or to misfortune. Again I should regard any considerable exodus of cultivators, or a systematic destruction of occupancy rights, not as Mr. Jones supposes, as in itself sufficient to warrant perhaps ignorant interference by a partially informed Collector; but as distinct ground for impugning the management under which the true interests of the estate, and therefore of the Government as principal proprietor, had been so disregarded. The great care ordinarily exercised in selecting the settlement agency, and the repeated checks by which full consideration is secured for its operations, might, I think, very reasonably be relied upon as guarantees that so serious a step as cancellation of settlement would never be resorted to lightly or hastily. In fact, I believe that, like sale for arrears of revenue, it would in practice remain a mere preventive, rarely, if ever, attaining the penalty stage, and that it would be enough for landholders to know that the traditional burdens on land would be revived to ensure their ready acceptance by all whom it would be worth our while to retain. At present it would only encumber the discussion if I were to go further into detail, and I have only said so much to remove misconceptions which gave my scheme a much more destructive and indefinite aspect than I meant it to have. As has been seen, I did not intend to make the penalty of cancellation necessarily follow on disagreement between landlord and tenant, nor indeed on any shortcoming which could not take a distinct place in the agreement between the State and its managing partner, the landholder. Nor did I contemplate that so serious a penalty should be inflicted except at a time and under circumstances which would admit of the case being most deliberately considered. Going on to minor objections, my suggestion that the malikana allowable to a dispossessed proprietor should be fixed at 25 per per cent. on the Government demand was a mere matter of detail, in no way vitally essential to my scheme; but in taking that figure I was guided by actual experience; and I can, if necessary, quote several instances in which sub-proprietors assessed at 50 per cent. on the Government demand preferred to shake off all connection with the superior proprietor, and thus lose the support of his primary responsibility for the revenue, rather than tolerate his interference. Then, in regard to Mr. Jones' remark that the seller, and not the purchaser, gets the benefit of what I have called personal assessments, I would reply that the sacrifice of revenue in such a case would be made, not with the object of creating a bonus for the proprietor, but simply to attach him to the land; and that the concession would lose all its force if it only served as a bait

to a capitalist seeking a lightly assessed estate as an investment. Lastly, it will be apparent even from the above short exposition of my scheme that it is applicable to the case of all heads of villages alike, and is not simply devised to be "held in *terrorem* over the heads of purchasers only"; nor need it be, as Mr. Jones thinks, inapplicable to the case of temporary transfers; for, in so far as it prevented the unhealthy flow of capital to the land, it would lessen mortgages almost as much as sales; whilst in the case of unavoidable mortgages the restrictions which I suggest on village management might easily be used to protect the estate against deterioration, and the tenantry against oppression. To these cases the penalty of cancellation of settlement would not of course apply, but the desired end might equally be attained on a similar principle, by making the mortgagee's possession conditional on his observance of the settlement compact; and in the event of his default, by taking the estate under court management, as is now frequently done under Section 243 of Act VIII. of 1859. I do not, however, pretend to have discovered a solution of all the difficulties of the land question, and my expectations will be amply answered if the simple expedient described suggests the true line which consideration should take. The question is so complex and difficult that I cannot be over-sanguine; still, the longer I think over it, the more convinced I feel that no real remedy can be found except in the direction in which I have sought, viz., in some alteration of the system of land tenure, which may lessen its attraction as a mere investment, without substantially detracting from its value as a source of livelihood. If this object can be attained in the way which I have suggested, we shall gain, not only by checking the temptation to advance on land with the ulterior purpose of acquiring it, but we shall secure the additional advantage of protection for the public interests in land. If, however, my scheme should founder on details, I should be the first to welcome any other means of giving effect to the principle on which it is based. The only point on which I should think it necessary to make a stand would be in questioning the efficiency of mere external treatment. Remedies addressed to symptoms may repress that particular manisfestation of the disease, but they do not prevent it from breaking out in some other way; and I firmly believe that so long as capitalists want land, and improvident agriculturists have it to sell, we can impose no barriers between them, short of absolute prohibition of transfer, which will not be either surmounted or evaded.

4. Take, for instance, Mr. Jones' scheme for the prevention of unnecessary loan transactions. He proposes that ancestral landed property should be exempt from civil process except in respect of debts expressly certified "to be proper debts to be allowed against the land". Such debts he defines to be debts incurred "in order to improve the estate, to buy seed, to pay the Government, or to meet pressing family necessities". I think the ordinary, and not unreasonable, objection which would be made to this proposal is that the Collector would be altogether over-burthened by having to discriminate

and pronounce on the character of every loan raised, ultimately or directly, on the security of landed property in his district. The number of such debts, including of course renewals on settlement of account, incurred annually in districts, may probably be counted in hundreds; and the enquiry in all cases of old debt, which form the majority of claims against land, would involve lengthy and difficult examinations of accounts. Then, supposing the facts arrived at, it would be far from easy to determine the character of the loan. A father's expenditure on marriages or shows may force his heir to incur a necessary loan in the next generation. Nay a man's own imprudence in borrowing at usurious interest in one year may justify his taking a loan on better terms in the next, or it may even occur that illegitimate expenditure of his rents may drive a landholder to a necessary loan for defrayal of the Government demand in one and the same season. It seems to me overhopeful to expect that a task of such magnitude and difficulty should be successfully undertaken by the agency of the already over-worked Tahsildar-Registrars, even with the aid of the Collector or the District Registrar. But at the same time I should be sorry to lay stress on mechanical difficulties if the scheme could be proved likely to effect all that it promised. It would not be too much to burden borrowers on land with the cost of a special agency for the registration of debts, were it certain that they would in return gain protection against insidious attempts to expropriate them; but it would clearly be inexpedient to assume a *quasi*-paternal protectorate over the money affairs of the whole body of landholders without a perfect assurance that the successful preservation of their best interests would more than compensate for the drawbacks and difficulties of domestic interference, and this is just the point on which I cannot feel confident. Supposing the difficulty surmounted of distinguishing between necessary and unnecessary loans, and as has been seen, what is unnecessary one year may become necessary the next; the mere withdrawal of the power of process against the land may hamper a creditor who is working to acquire it, but can be no effectual bar to him. If he fails to get his claims certified, he cannot of course enforce a sale of the estate through the agency of the court; nor, as I understand, can he proceed against the rents by obtaining the appointment of a receiver; but he can attach every penny of the rents as they are paid in, and thus become the judgment-debtor's personal property,—he can keep him perpetually harassed by distresses, and thus strip him of the commonest necessaries of life; and lastly, he can, up to a certain point, deprive him of his liberty by proceeding against his person. With these powerful means of pressure on the one hand, and the hope of further advances judiciously dangled before the debtor on the other, there are probably very few landholders who could not be brought to sell their birthright almost as quickly as by the direct intervention of the courts. The protection afforded by registration would thus be effectual only in the case of insolvents stubborn enough to brave the miseries of a hunted life for the sake of saving their patrimony—a class whose retention of the land could scarcely be advantageous to any one.

5. So far my remarks have been confined to the question of checking future alienations; and though nothing we can do would prevent spendthrift landholders from running into debt and selling their estates, I think that my scheme, if successfully worked, would at least have the effect of preventing owners of land from being *lured* into debt for the sake of their possessions, and of neutralizing the ill effects of transfer, where it was inevitable, by forcing the transferees to do their duty to the land. The latter of these advantages would equally be gained in the case of estates already encumbered, but in other respects it would be necessary to treat this phase of the difficulty in a different manner, and to be content with a comparatively small measure of success. Claims, however they have arisen, which have once become legally binding, must be respected by a civilized Government; and Mr. Jones' proposal to withhold direct satisfaction against the land from so much of the claims against it as could not bear sifting, probably goes as far as considerations of right or policy would permit. His suggestion is that a kind of encumbered estates court, under the management of the Collector, should be created in each district; and that encumbered proprietors should be allowed to place their estates under its charge, and to invoke its aid in the management of their affairs. Its main function would be to determine what portion or portions of the claims made against an estate represented the original advance, with reasonable interest*; and for so much it would authorize execution against the land, leaving the creditor to proceed for the balance of his demand against the person or personal property of the debtor. No doubt this would be always a difficult, and at times an arbitrary, process; but nothing short of it would have any appreciable effect on the evil to be dealt with; and its otherwise anomalous character would be redeemed, as Mr. Jones points out, by the "Oudh clause", that is, the provision making the validity of sales in execution of decrees conditional on the consent of the higher appellate courts. The necessity of this consent obviously involves the power of refusal, which is a mere nullity, if it can only be exercised when it is not required; that is to say, when the claims on an estate are below its selling value, and therefore leave room for further loans. In such cases the encumbered proprietor wants no aid or protection from authority, and yet it is in them alone that intervention is possible according to our present practice. Something more is required to make interference effective, and having warned creditors that the State cannot allow the land, in which it has so direct an interest, to be treated as a freely negotiable security, they cannot complain if we make a distinction between the classes of claim for which we will, and for which we will not, allow execution against the land. Indeed, if my principle were not adopted, I should prefer this mode of dealing with encumbrances on land, future as well as existing, to Mr. Jones' scheme for registration of loans; because,

* Mr. Jones proposes to exclude compound interest, but it would be inequitable to lay down a general rule of this kind. In some cases compound interest at reasonable rates may be a very fair charge, whilst in others simple interest at exorbitant rates may be a very unjust one.

although in principle it is clearly better to prevent indebtedness than to attempt to remedy it, in practice the classification of loans would be found almost impossible ; whilst there would be no comparison between the amount of labour involved in the investigation of every loan on land made throughout a district, and the comparatively simple task of adjusting the affairs of a few insolvents annually.

6. Before concluding, I wish to add a word regarding Mr. West's scheme of family settlements for the protection of landholders. On reconsideration, I think I may have underrated the advantages to be anticipated from a measure of the kind ; and I agree with Mr. Jones that the power of thus tying up land would be prized by certain classes of Native proprietors. I think, however, that we should deceive ourselves if we supposed that it would meet with universal, or even very general, acceptance. The interests of most Hindu families are so undivided, and the younger members are so much influenced by the opinion of their elders, that the folly of one is the folly of all, and the divergence of wills, in which lies the chief security of settlements by consent, is often an inappreciable force. Still I should be glad to see the scheme tried, because it would be quite in consonance with Native ideas ; and even if it had not all the effect which is hoped for from it, it could do no possible harm.

Note by Mr. M. Low, *Commissioner, Narbada Division, on the preceding papers, and Mr. Raymond West's Pamphlet on the Land and Law in India.*

When these papers were sent to me for opinion the statistics showing actualities of indebtedness of our landed proprietors were in the course of being collected, and I deferred expressing my opinion until we should be in possession of the facts which we needed to know. I now have before me the statistics for my own five districts only. But full information for the Provinces, as a whole, must by this time be in the hands of this Administration ; and the time has come for the Chief Commissioner to make up his mind as to what course Government is to be advised to pursue. These observations, like those of Mr. Grant and Mr. Jones, are designed only to examine the problem in its local bearings. What we are here concerned with is the state of things in the Central Provinces. But, however narrow our limits in our local treatment of local difficulties, we shall most of us be better equipped for the work, by acquaintanceship with Mr. West's most suggestive essay.

2. Mr. Grant begins his paper thus—"I assume that for the purposes of the present discussion the present transfer of land is an evil, and that the only question is how to remedy it." Mr. Jones takes the same assumption : he says—"the State ought to interpose to check the present unhealthy tendency of land to transfer itself from the old landholding to the new monied classes". And it is clear that not much

more than this was meant by Mr. Grant; for both writers are pretty much agreed as to what constitutes an "unhealthy" tendency to transfers, and found their recommendations mainly on the extent to which this tendency has now grown. I, too, follow on the same foundation, although in doing so I modify previously held opinions, and although I cannot quite consent to the manner in which Mr. Grant has laid down the origin of the difficulty.

3. Fully sensible how little interest attaches to the history of my own personal change of opinion, I ask indulgence to give it, in the belief that it may stand as a typical instance of the method in which not dissimilar changes have been wrought in the views of a number of other officers in the Central Previnces. • I was not in these parts when in Sir Richard Temple's time, or perhaps just before Sir Richard Temple's time, the then Government of India determined on conferring proprietary rights on our upper landholding community in the Central Provinces. I have not had the advantage of seeing any papers in which the question of bestowal of these rights was discussed. But after the bestowal had become a fact accomplished I, like most other local officers, pondered much over its probable future effects, sometimes doubting a good deal, still hoping more, never at the worst descrying prospects of immediate and wide-spread disaster, and always holding fast to the maxim that any deliberately adopted act of the State in this country ought to claim loyal support from those concerned in the carrying it out, so long as no mischief from it can be prognosticated with some approach to certainty. When furlough took me away in 1871 the indebtedness of some of our landlords—indebtedness dating since the settlement—was just beginning to attract attention. On my return in 1873 it was attracting more; but I for my own part failed to apprehend its degree. I became aware that mischief was brewing for certain landed families. But there was the clinging to the hope that the mischief would not be widespread. The movement was perceived, but its full meaning was not seen then; but before obtaining the statistics now before us, indications derived from records of many civil suits from consultations with the district officers of Hoshangabad and Narsinghpur, and most of all from personal interviews with many individual members of the landlord and trading, the borrowing and the lending communities, became sufficiently strong to warrant suspicion that the danger was growing wider and nearer than had yet been thought. And lastly, Mr. Jones' well-founded forecasts, soon followed by the actual figures supplied with my recent report on the "statistics of present indebtedness of landholders", and by general information as to things outside this division, have convinced me that we are now actually face to face with an evil of the first magnitude; and that unless we shall be enough modest to confess a mistake, and enough resolute to act towards its rectification, we shall see a very large, an alarmingly large, proportion of our landholders sink to ruin before our eyes.

4. In the first two pages of his first paper Mr. Grant discusses the origin of our dilemma. He plainly avows that "much of the

difficulty of the land question may reasonably be referred to the effects of our system in converting the possession of land from its former function, as the occupation of a class, into a mere investment for capital". But commencing with the axiom, statistically, that under a Government such as ours the energies of non-agricultural men must find their chief vent in trade, that under our strong but exclusive Governmental system "closing the ordinary avenues of ambition" trade is the only thing left for the enterprise of the country, he goes on to apply that axiom to the dynamics of the present situation in this way—that, what with the still more complete and more energetic Government of our own day, what with a better defined system of laws, improved inter-communications, expansion of the credit system, education, and more wealth leading towards acquisition of still more wealth, the labourers in the field of enterprise have received accessions to their numbers, while the domain itself, though in area slightly extended is in its description unaltered and unmultiplied. There is trade, and nothing but trade after all. Thus "the old established capitalists of the country are beginning to find that they have no longer a monopoly of its internal commerce, and that the expansion of the credit system, caused by the greatly increased rapidity and security of transit, brings countless petty speculators into the field against them. Indeed rich traders commonly bewail the differences between dealing in an old fashioned way with well known firms, and running the gauntlet of speculation with the thousand men of straw, springing from nowhere, and blown away by the first adverse wind. Not only do these free lances of commerce very much embarrass more regular dealers by the uncertainty of their movements, but, having nothing to lose, they impede the old roads to profit by crowding forward to scramble for small gains. The result is, I believe, that capital is more than ever turning towards the land". Of course the tendency hitherto of the British system in India to repress careers other than trade is admitted by all. But this is so all over British India, and will not help us in the particular matter before us. This is old and general, while the phenomenon we are considering is recent and special. But I cannot help thinking that in regard to recent events, Mr. Grant has somewhat over-estimated the jostle in our local trading world. The old fashioned large firms have, it is true, the dissatisfaction of seeing a number of little men engaged in their small way in branches of business which they once monopolized. But the counter-theory (we have no real information on the point) suggests itself forcibly to me that the sum total of our internal commerce may have enough expanded to leave room for the new-comers, without much diminishing the gains of old established firms.

5. For my own part I should like to see the question of the origin of our dilemma put a little differently. It is quite correct to think that capital has been far too much directed towards the land. Not so correct it seems to me to think the fundamental reason of the direction is a sudden awakening of the traders to the advantages of possessing land themselves. But when we speak of the origin of a

thing we ought to mean the first cause of its being. And the first cause of being of the present indebtedness of our landholders seems to be simply this (and Mr. Grant's proposals show that he admits it)—that a premature bestowal of unrestrictedly transferable proprietary rights on men not yet fit for their exercise has put lending capital in the position of being "unhealthily directed to the land". It is not pretended that lending capital would have been so directed if there had been no giving away of the rights. I should have myself preferred to put forward the real simple origin plainly from the fountain head.

6. Then I apprehend that we need not go so far as to believe that the wish for the land itself as a commercial investment is what is animating the "mahajuns" generally in the part taken by them in this movement. I take it that the desire to borrow and the new means of borrowing on the one hand, and the wish to lend at usury up to limits of capital available and reliable security offered on the other, are reasons sufficient to account for the practical "flow of capital towards the land", under its present conditions, without drawing us on to any consequent theory that possession of the land itself is coveted by the traders, or thought by them a desirable investment. From such facts and indications as have fallen under my own observation, I am led to think that, generally speaking, the "banya" does not want the land: what he wants is only to make the most he can out of those who hold it. I do not think the lending classes need be charged with deep designs from the commencement, little by little to get their debtors' lands. It is sufficient for our purpose to see that this ultimately is likely to happen. The debtor hopes to pay, and the creditor, too, hopes he will,—and with handsome interest. But the course of events is too strong for both; and after repeated extravagances of the debtors, fed by the creditors, in hopes of large ultimate money profit, there comes a collapse, and the creditor finds that there is nothing at all for him to get his profits from except the land. It seems from all I can see that the money-lender hopes that his debtor will "last"; and that creditor and debtor are often alike astonished at the abruptness of the catastrophe. Recently in various instances when called in to help embarrassed landlords and creditors to settle their affairs, I have found anything but a general disposition on the part of the creditors to undertake their debtors' lands. On the contrary, the creditors' cry has generally been—"if possible, ready money, and cut off extra interest"—"any thing but management of land". Not long ago I wrote as follows: "It does not cover the whole ground to call every 'banya' a harpy, and to set forth that mahajuns are all rapacious and extortionate. If a money-lender has to wait very long for his money, he is sure to charge high interest, and interest will accumulate on interest. What most money-lenders want is quick returns. Many of them most urgently need money due by their debtors to carry on their own trade, and when debtors are not punctual in re-payment, then is the time they are made to pay for fresh accommodation. Of course when land is the

only security, they are obliged to proceed against it, but they do not covet it, and would rather have their money back with interest". All that I have since seen tends to confirm the views then submitted. We should, I think, understand the idea of the "banya fighting his way to the land", only in the sense of his "fighting his way" all round; the ultimate outcome of the "fighting", however, often leaving him only the land to take. That the typical "banya" of the day is a bad landlord, that when he becomes one he is too apt to "manage his estate on purely commercial principles", that the application of such principles to the management of estates here is simply disastrous, and that on the whole, under our system, the "banya" has the advantage over his landed debtor in cases of dispute, are no doubt impregnable positions. My belief, however, is that the typical "banya" knows he will be a bad landlord—bad for himself, as well as bad for his tenantry; that in the main he does not invest in land, except when forced to do so as the only way of recovering his claims; and that any theory which credits him with voracious "earth-hunger" needs serious qualification. Nothing can be truer, too, than what Mr. West says about the landed borrowers themselves being anything but immaculate. The way in which they break away from fair claims by duplicate mortgages on the same property, and so forth, is wonderful. In this way the lenders are frequently obliged to sue or to foreclose for the sheer saving of themselves. On the whole then our old landholders, it seems to me, are being ruined, not by any other class skilfully and designedly working to their ouster, but simply by their new proprietary privileges involving excessive borrowing temptations, which have proved too alluring for them to withstand. But subject to this distinction between desire of the trading community to own land and their desire to squeeze the landlords, and the question of the *origin* of the difficulty apart, I can follow Mr. Grant's and Mr. Jones' opinions as to the practical flow of capital towards the land. The evils of that excessive flow, so far as the old landlords are concerned, are eventually the same any way we put it. But it is not without use to see that remedial legislation needful to save one class from losing the land will not baulk any real but inconvenient wish of another class to become landed proprietors, but will merely destroy a branch of business ruinous to the one party, and only quite recently opened out to the other through an error of our own.

7. This paper need not expatiate on the magnitude of the evil threatening us. That very magnitude will indeed form the justificatory basis of whatever legislative changes the Chief Commissioner shall propose. But it can best be treated for the Provinces as a whole, and on statistics which are at Nagpur, and not here; I may say, however, in regard to my own particular division, that extremely nearly one-half of the landholders of the Narsinghpur and Hoshangabad Districts are shown to be in debt to an extent amounting to more than five years' purchase of the annual profits of their estates, and that over a quarter of the Betul landholders are similarly indebted. And so with regard to twenty-nine out of every hundred of the five thousand "old"

proprietors in the whole division—nearly three hundred individuals being struck off from the whole proprietary body as having acquired their rights since the settlement. Indeed I fear that strict actuals would prove even worse totals. For there are reasons for believing that the Chhindwara debts have been considerably understated. I have great faith in the correctness of the Narshinghpur, Hoshangabad and Betul returns; and from all I now know, I am led to fear that the Deputy Commissioners of the first two districts are right in believing that at least one-half of the (nearly) fifty per cent. returned as indebted up to five years' purchase of annual profits are really indebted up to more than ten years' such purchase. That many of them seem to be already altogether ruined beyond any means of repair is also true. And again, of the total 5,158 "old" proprietors in the division, only 2,399 are reported as wholly free from debt. It is not denied that there were some indebted landholders in the pre-proprietary period, but it is simply notorious that they were not so in this sort of way. It is obvious, too, that things could not last in this way. The late conferral of full proprietary right marks both the beginning and the cause of the present state of things. If we are asked to account for the fact that the landholders of Nimar, where proprietary right has not yet been formally conferred, are also heavily in debt, the answer is simple. They have been, I may say, for the last seven years in expectation of having it conferred. After Captain Forsyth's settlement was concluded, it happened that there arose doubts in certain important matters requiring confirmation by Government; and Government sanction has not yet been formally accorded to the settlement. But this does not prevent the expectations and belief which creditors and debtors must have entertained and acted on ever since Captain Forsyth's operations began. Altogether I have now no hesitation in accepting Mr. Jones' belief, as applicable to this division, to the effect that the owners of 15 per cent. of the entire landed property of the country are on the brink of ruin, and that "there are no signs of improvement"; on the contrary, there is every sign that things are getting worse.

8. If the same, or anything like the same, conditions exist in the rest of the Provinces, the Chief Commissioner has now a case quite impossible for Government to resist. In Mr. Jones' words—"the mere statement of the fact that * * * * one of the largest and most deserving classes of our subjects is found to lose its ancient place in the social economy, and go swiftly to ruin, ought to suffice to prove to us that whether political economy appears to one to command interference or not, it would do so, if we could perceive all the conditions of the problem. On the face of the question the class which our rule destroys must be more sinned against than sinning. We cannot draw an indictment against half the people of India, and we may be quite sure, whether we can see it or not, that we and our institutions are in the wrong, and not they. There is but too much truth in Mr. West's remark that being foreigners, and therefore but little pervaded by the current sentiments and necessities of our subjects, we fail in instinctive perception of what is for their good, and obstruct

that spontaneous reception of what is beneficial and expedient which sustains and guides nations as much as living organisms in their growth". Is "the swift going to ruin", in this particular case, the unmistakeably direct result of the new proprietary charter, or is it not? That is the simple question. If it is, then let us straightforwardly say that it is the charter itself which needs mending.

9. Passing on from the origin and extent of our difficulties, to the means of solving them, I give the most unqualified* adherence to Mr. Jones' proposals, paragraphs 27 and 28 of his paper, in regard to treatment of obligations which our landholders have already incurred. Mr. Grant, too, agrees. The substantial equity of now allowing the debtors some sort of beneficial interest from the "Oude Clause" has been shown by Mr. Jones briefly, but so conclusively as to leave nothing to be desired. Nothing less than the measure here proposed can now avail to save many of our best landed families from utter ruin. Its justification, as against the creditors, lies in the considerations that Government must have intended the "Oude Clause" to have had some practical effect in a sense beneficial to the landed proprietors, that hitherto it has been allowed no such practical effect whatever, that "the money-lending classes have entered into their dealings with the full expectation that substantial effect would be given to it", and that the working (within due limits of time) of Encumbered Estates Courts on the principles of which Mr. Jones gives the outline would not apparently exceed the effect which the Government and the lenders must have respectively intended and expected the clause to have. I think that admission of claims for settlement of accounts in the Encumbered Estate Courts should be allowed up to about one year only, after passing of the Act. Every Deputy Commissioner should be made a court for the purpose; and Senior Assistants and Extra Assistant Commissioners might be empowered to do a portion of the business. There should be one appeal only, but admissible on application either of the compounding debtor or of the creditors. There is no need here to enter into further detail. The principles adopted by Mr. Jones in regard to treatment of the two separate descriptions of debt would be amplified to the necessary extent in the Act. I agree as to not compelling any man to bring his estate into court, and as to requiring every one who did, to resign his land (subject to the appeal) absolutely to the court. I also fully endorse Mr. Jones' recommendation that the administration should be empowered in special cases to grant Government loans.

* Subject only to the same qualification as that noted by Mr. Grant in the 5th paragraph of his second paper about non-compulsory exclusion of compound interest.

10. To come now to the difficult part of the question, the question of the measures to be adopted for the future. The first thing needful seems to admit that the responsibilities and liabilities of landholders have not hitherto been defined with sufficient precision, and to proceed to their proper definition, and enforcement by law. This point is very ably put by Mr. Grant, both in his first and in his second papers, and the principle is emphatically asserted too by Mr. Jones, who, however, has no specific propositions on this part of the subject, probably because,

as shown subsequently by Mr. Grant, he missed the real bearings of the remarks in the latter's first paper. This point is insisted on by Mr. Grant, mainly, on the assumption of truth in his theory that the trading classes inordinately covet land as a commercial investment, and that insistence on it will be a good means of checking the realization of their schemes in this direction. As I have before said I do not myself believe in the direct accuracy of this theory. But I fully admit that the unchecked recklessness of the old landholders does, and must, under the present system, end in bringing about their ouster, and supplanting by the money-lenders. And since the ejection and supplanting of the former class is the end which we need to check, I welcome this amongst other means towards that end, while I would also claim, recognition of the principle involved, on every ground of equity and general political expediency in this country. The money-lender of the day makes a bad landlord in his relations to the State as well as to his tenants. It is with difficulty that he discharges any semblance of his duties even now, loosely defined and practically little enforcible by law as most of them are. His difficulty is enhanced where his ownership is represented by an agent, as it generally is. Define and codify his duties and the penalties attaching to their non-observance, and you make landownership more distasteful to him still. But, taking the matter generally and without reference particularly to the "banyias", the State and the landholders, as Mr. Grant well points out, are partners, and as things are at present, the latter have all the benefits and none of the responsibilities of the business except the one responsibility of punctually paying in their money dues. A village "managed on commercial principles", or under any sort of bad management whatever, may be "falling off", there may be systematic efforts going on towards obliteration of occupancy rights. There may be unfit managers destroying prosperity and content by their grasping and short-sighted acts. The executive may have no sort of assistance in dealing with crime, and so forth, and wrong or carelessly made village accounts may be sent in, and all the while a bad landlord or a crafty and unscrupulous agent may manage to steer clear of personal consequences, while the village is going to ruin and the tenantry are being made miserable. This ought not to be in the interests of the State and in the interests of the people. The old landholding community in the pre-proprietary period were used to these responsibilities, and bore the burden cheerfully, indeed felt them no burden at all, since they were from time immemorial inseparable from their position in respect to the land. The responsibilities were indeed never very accurately defined, but they were yet well understood, and the power of the district officer, though without much precise specification, was notoriously elastic enough and strong enough to provide for their practical enforcement. But we have arrived at time of less elasticity in the way of power, and yet for all administrative purposes and for the good of the agricultural community at large, it is needful that the power should be preserved. It is no answer to say that we have the power in the ability of the State to eject a proprietor on "breach of

the conditions of the settlement". That power is too large, and the penalty too heavy, to be exercised, except in the extremest cases and after overt acts scarcely ever discoverable in practice. What we need is some attempt at classification of things which must be done, and left undone. I entirely agree with Mr. Grant in thinking that it would require "great care and judgment to define and test shortcomings of this sort with accuracy". But I think the thing can be done and that we ought certainly to do it. The old responsibilities and liabilities of the landholders to their tenants and to the State ought now to be considered, and those of them which it may be desirable to retain should be formulated and made enforceable by law, under sanction of a graduated system of penalties. Their enforcement is not only abstractedly equitable under any system of tenure "in which no absolute proprietary title in land can be recognized", but also, it is in the particular case before us, at once necessary in the interests of the much larger agricultural body below the landlords, and consonant with all the ideas still held by all classes of our subjects, and derived by them through countless ages. Whatever other changes may be coming upon us, I submit that in *this* particular no change in theory as to what is right and fitting is likely to come for many a long day. Once admit that we have lost the due means of enforcing the old liabilities, and the only thing remaining to be done is to remake the means.

11. Other remedial measures are to be found nowhere save in the curtailing, in some shape or other, in the restricting, by means either direct or indirect, the present unlimited powers of the old landholders to burden or dispossess themselves of their estates. And since we shall all of us agree in thinking (1) that in the purely abstract, and other things being equal, it is best to leave a man to do entirely as he likes with his own, and (2) that the persons who have acquired their proprietary rights since the late settlement may be left to take care of themselves. I intend in the rest of this paper, wherever I shall speak of curtailing the "unrestricted right of transfer", to signify curtailment of that right only where it has been derived after *ancestral* connection with the land prior to the settlement.

12. Mr. Jones in the 2nd paragraph of his paper sets forth what he believes to be the proper conditions and limitations, under which these further remedial measures should be admitted as fit for discussion. He says first of all that whatever proposals are to be made, they must "not tear too large a hole in our revenue system", and above all they must "not set at definance any of the recognized principles of political economy". And the following four propositions are then laid down:

"I.—That in the changes we may introduce we must endeavour to avoid the suspicion of not keeping faith. Some breach of the terms of the settlement is probably unavoidable, but it must be as slight as possible, and must be such as to convince the people we are seeking their welfare only and not our advantage.

"II.—We must be most careful not to destroy landholders' credit *i. e.*, the legitimate and healthy power of raising money for the improvement of their estates, for pressing family necessities, and for the payment of the Government demand.

"III.—Neither must we interfere with the legitimate and healthy flow of capital to land. Happen what will, we ought not to adopt any measures the effect of which will be to keep the land in the hands of one class, when another class is better able to use it. We must not maintain an aristocracy of pauper landholders.

"IV.—We must distinctly recognize the fact that the mere exemption* of land from sale in execution of money decrees would be an altogether insufficient remedy for the evil we have to encounter."

On the matter preliminary to the four numbered propositions, I have only to say that I assent, on the understanding, (1) that "too large a hole in our revenue system" means a hole larger than is sufficient to let us through to the mending of what is amiss; and (2) that the recognized principles of "political economy" are not to be held to lead up to any sort of preferential claim for this or that system of land tenure. As Mr. Jones himself hints, "if we could have perceived all the conditions of the problem, "political economy might possibly have shown that we ought not to have conferred proprietary rights at all at this stage of the people's history and condition. I am anxious to be for my own part clear on this point upon which mention of "political economy" has been brought in. I am sure that Mr. Jones himself meant nothing disallowable from the common sense point of view. But it is well to admit clearly that maxims of political economy can teach us nothing whatever, as to what system of land tenure is the best in the abstract for any particular people. Political economy does teach us that it is in the abstract right to let people do as they will with their own. But when we apply the maxim to the concrete in any direction soever it is at once shown to be liable to all sorts of modifications, arising from the present conditions, needs, habits of thought, and the past history of any particular society. This, it may be objected, is mere platitude; but I say that we have all of us much need to recollect it; we shall many of us find ourselves apt to be led into this sort of erroneous reasoning. Political economy demands that a man shall be allowed to do as he pleases with his property. Therefore, when we declared our landholders proprietors of their estates, we were bound to declare the proprietary right absolute in so far as regards power to alienate. Therefore any direct curtailment now of that power to alienate is *pro tanto* a sin against political economy. The undue scope allowed to the first premiss is not perceived. The important fact is missed that political economy will only insist that a man shall be permitted to do as he pleases with his own, if, and in so far as, he can do so without causing more harm to himself and others than the good

* How this is so, and how futile have been the provisions of the "Oude clause", has been fully explained both by Mr. Grant and Mr. Jones.

gained to himself and others by leaving him in free exercise of the power. The assumption that a man knows what is best for his own interests underlies the first premiss. No one will pretend that political economy demands that we leave children to do as they like with property over which they will eventually have absolute right of ownership. If our old landlords are so far like children in respect of this new unrestricted right to dispose of their estates, that they cannot yet be safely trusted with it, then they ought for the time to be treated in the matter after the method which we should pursue with children. Then as to the four specific propositions, I should agree to the first, if I might be allowed to put it, as I now put it opposite,* and I entirely agree to the last. These two might, I think, be left to form the lines for discussion, if we were to add a third proposition to set forth this, that whatever measures we adopt should be such as not to close altogether the approaches to free rights of transfer in the future; but, on the contrary, should be such as to show that we still admit that free right of transfer is a good thing in itself, that we wish to lead on our landholders to the capability of exercising the right in the future, and that the right will be restored in its integrity when the capability comes. I dissent from Mr. Jones' second and third propositions, or at least I dissent from what they seem to imply. A landholder's "legitimate and healthy power of raising money to improve his land, &c"., and the "legitimate and healthy flow of capital to the land", are somewhat vague terms. The difficulty remains to say where the illegitimate and unhealthy power and flow begin in the particular conditions before us. "Happen what will", Mr. Jones too says, "we ought not to adopt any measures the effect of which will be to keep the land in the hands of one class when another is better able to use it. We must not maintain an aristocracy of pauper landlords." But the present tendency of the transfer of land is, on Mr. Jones' own showing, not a question between the present landlords and another class better able to use the land, but a question between the present landlords and a particular class *not* better able to use it. And as to not "maintaining a pauper aristocracy", that is all right enough in the abstract. But in the present case what we are actually trying to do is artificially to maintain for the time a certain particular aristocracy, pauper or otherwise, to give them a breathing time to fit them to preserve themselves.

13. And this leads me now to plain expression of the opinion that no reasons founded on general morality, any more than reasons founded on general maxims of political economy, will forbid us to proceed to direct modification of the unlimited right of transfer, if our best remedy shall be found to lie in that direct modification. I find myself quite unable to approach this newly bestowed right in the same

* I.—That in the changes we may introduce we must endeavour to avoid the suspicion of not keeping faith with the landholders. Some breach of the settlement terms is quite unavoidable in order to the preservation of the very class in whose interests it was made. The breach which we make ought not to be more than is sufficient to effect the desired object; and it should be made in such a way as to convince the landholders that we are seeking their welfare only and not our own advantage.

spirit of reverence as Mr. Jones. The only parties to the gift are the State and the landlords. For I apprehend that no one will think that the money-lenders, or any other outside class of the public, are entitled to prospective advantages to be derived from continuance of the gift, or to indirect damages on account of its modification or withdrawal. If both parties were free agents, the gift would be withdrawable on common consent. But both parties are not free agents. One of the parties is emphatically not free. The consent of the landlords was never asked when the gift issued. Why? Simply because we believed rightly that they were not wise enough to judge whether or not the gift would be beneficial to them. We were supposed to be able to judge for them, and the gift was given solely for their advantage, and quite unselfishly on our part. We were the absolutely governing, they were the absolutely governed. The contract of bestowal and acceptance, so far from being between two parties each standing on its own independence, was one in which the one party is wholly independently giving, the other wholly dependently receiving. Now I say that a gift made under these circumstances is most justifiably revocable at the pleasure of the giver, as long as the revocation is made exclusively for the benefit of the late recipient. The conditions are such that, both in the giving and in the taking back, the one party is obliged to assume charge of the interests of the other; and as long as it attends faithfully and to the best of its power to those interests, it cannot be charged with immorality, either in the giving or in the taking back. If Government were to revoke the gift for its own advantage, the thing would be a disgraceful scandal; but if the revocation or the modification of the terms of the gift is shown to be of vital necessity to the interests of the late recipient, against whom can it be pretended that any sin is committed? We must indeed most freely admit that we are liable to error in judging as to what is best for our subjects. But unfortunately that liability does not relieve us of the obligation of acting on our judgment, such as it is. But we are fighting merely with a nonentity if we say that any moral duty commands us to leave the gift irrevocable. Moral duty to whom? Moral duty is nothing standing by itself. It is nothing without personages by whom and to whom it is to be done. The personages here are the Government and the landholders, for whose interest, equally with its own, Government stands responsible. Suppose it proved that the interests of the landholders absolutely require us to revoke or modify the gift, to whom, or to what, can we owe any duty to perpetuate it? It might even be contended—it was contended recently in conversation with me by an officer of long local experience—that the old landholders have themselves by this time seen that they cannot be left to the free exercise of the right of transfer, and that if they were polled to-morrow, they would show a triumphant majority for its restriction; and I at one time thought of proposing that we should make restrictions now, only on consent in each individual case. But the more I think of it the more I feel that they themselves cannot be trusted in the matter. Individual consent might do much, but it would not, I think, do enough.

But what I am chiefly here concerned with is the fact that the circumstances are such that we cannot divest ourselves of the responsibility of judging; and that considerations of morality by no means require us to maintain things as they are, but merely to base any changes we may make wholly on considerations of what is best for the people whose interests the changes are to affect.

14. To return to the subject at the stage where it was left at the twelfth paragraph of this paper. The remedies suggested by Mr. West, and proposed by Mr. Grant, for local application may be said to be direct remedies, while those proposed by Mr. Jones are indirect. The leading idea of Mr. West is either total stoppage of the power to alienate, or else re-assessment on alienation, with a rack-rent to be levied for the benefit of the out-going proprietor. Mr. Grant will not go so far as to declare ancestral property inalienable, but on the other suggestion he is in accord with Mr. West. Mr. Jones, reverencing as he does the proprietary right as it stands, will not consent to touch the tenure itself, and is forced to confine himself to indirect treatment, that is, treatment calculated to fortify the thing sought to be preserved, not by rendering it in itself and in its essence more impregnable, but by devising means to hamper hostile approach to it, and we have in consequence the very ingenious scheme propounded in Clauses II. and III. of paragraph 19 of his paper, and amplified in paragraphs 22 to 25. It consists of a system providing means for determining what are proper debts to be allowed against the land, and for certifying those debts, and allowing no civil processes to issue against land, except in respect of debts so certified. This scheme has been criticised and disapproved by Mr. Grant in the 4th paragraph of his second paper. I am not aware whether Mr. Jones has since modified his plans, or whether he is still disposed to think they would be effectual. I myself fear that they would not be so, and as my reasons are very much the same as those given by Mr. Grant, I need not repeat them at length. I do not say that the scheme is unworkable. There is scarcely any amount or description of work that cannot under our system be somehow or other put upon and got through by that universal labourer, the Collector, and his Assistants. A special agency might no doubt be formed, and the work might be got through somehow or other; but not to speak of mere difficulty attending faithful enquiry into the history of the reasons for every proposed loan, nor of mere unevenness of practice likely to occur in different districts; my main objection is this, that there would be an inevitable and irresistible tendency to make every loan *appear* to be a proper "charge against the land". There would be no counteracting influence against this tendency, for both lenders and borrowers would have common interest in furthering it. The Collector, between the two, trying to uphold an abstract principle, would be overborne by a torrent of falsification and sophistry framed to square, with the abstract principle, each particular transaction as it came up. I should fear that the task would be impossible to lay down principles, at once broad enough and closely defined enough, to

enable the Collector to discriminate practically between proper and improper loans in each individual application. The art of clothing applications in the requisite guise would be too assiduously, and as I at least think too successfully, cultivated. It would come I think to this that hardly any loan would be barred. The "certified debts" would then keep pouring in, and in fullness of time would overflow the land, as surely as ever, if by a rather slower process. Other indirect remedies might no doubt be devised and advocated, but I myself am not able to conceive any one better than that devised by Mr. Jones. I have thought of several others, but of none so good. So far, therefore, as this paper is concerned, I may now turn to remedies addressed directly to the tenure, and in this direction I am most firmly convinced that the only solution of the problem is to be found.

15. The plan of out and out stoppage of all right to transfer need not be discussed. I fear that my own proposals may go further than will be thought reasonable by many other judges at least as competent as I am. But I am not prepared to go as far as this, partly because I think present means of preservation of the old landholders may be found by largely restricting the right, without altogether abolishing it, and partly because I see that we must in after times come again to allowing free right of transfer. There cannot, I think, be a permanent divorce between the full right of transfer and other rights of ownership. Circumstances may be such as to justify a temporary separation. But whatever we do, we may rely upon it that here, as elsewhere, the general tendency of things is to make ownership of land, like ownership of other things, unqualified, in so far as power of alienation is concerned; and hence it seems to me to be most absolutely essential to frame our measures so as to give our landholders opportunity to prepare themselves for full freedom in the future, by entrusting them now with a partial freedom. This is what the plan of absolute obliteration for the present of the right of transfer would not do. As to stoppage of the right, except "with the assent of Government" in each individual case, a modified procedure which seems to be incidentally suggested by Mr. West, it is open to the objection; that it would involve the laying down of principles which would themselves be more conveniently presented in the form of a primary system of modified right of transfer. Another suggestion made by Mr. West is that only that portion of any holding should be allowed to be transferable which should be over and above what is necessary for the comfortable maintenance of the holder and his family. This suggestion was, however, plainly intended to be applicable to a "ryotwari" system, and the plan would, I think, anywhere be exceedingly difficult of application, if only on this score, that we have no standard by which to measure the limits of a "comfortable maintenance". Applied to malguzari tenure it would probably be impracticable, for the standard of "comfortable maintenance" differs in every case according to habits, family, individual disposition, and extent of land. The plan would only be workable at all amongst a people whose holdings, means and habits of living, &c., were on something very like a dead level,

and that probably a rather poor level; and besides it seems open to the objection that while it might preserve to the landholder the means of existence, it yet offers no bar to his throwing away what has hitherto made existence attractive to him. Those who only had comfortable means of subsistence to begin with would not be affected; those who had more than this might lose their superfluity, which would find its way into the hands of outsiders. The tendency would be to fine down each old landholder's land to a humdrum level of decent means of maintenance. Without saying anything as to whether this is a healthy state into which to mould the old occupiers of the soil, it may safely be predicted that those who had lost their superfluity would not be a contented body, and that in these Provinces at least a vast proportion of the land would go to the outsiders after all.

16. I now come to Mr. West's particular suggestion which has been accepted by Mr. Grant as offering the best local remedy to our hands,—the proposal to make all estates subject to re-assessment on alienation, and to levy of a rack-rent for the support of the out-going proprietor. The measure here proposed, combined with insistence on performance of the duties attaching to possession of land, is, Mr. Grant thinks, the best measure we can take. I need not repeat what I have said before as to my unqualified adherence to Mr. Grant's main principle of direct application of remedies to the land tenure itself. And as regards Mr. Grant's particular method of applying the principle by making assessments personal, or rather by making their continuance conditional on the estate not going out of the family, I wish at once to say that I think it would be effectual. Evidently it would operate with enormous force towards prevention of transfers. I think the scheme quite workable in practice, and certain to do an immense deal to bring about the desired end. It is true that the direction which my own proposals will take is a somewhat different one. But I claim no exemption from the common weakness of liking one's own opinion beyond its merits judged impartially. My own scheme, I am very well aware, has yet to be subjected to criticism, and shortcomings not perceived by me may very likely be found plentifully. I wish to say this that if my own proposals do not commend themselves to the Chief Commissioner, then I should like to see those adopted which have been made by Mr. Grant. Where Mr. Grant's scheme appears to me to be imperfect, is in the following points:

First.—There would be some uncertainty as to exactly what the proprietor had to sell or to burden. General principles might be laid down as to what margin of profit was to be left to the in-comer at the new assessment according to the nature of the transactions preceding the transfer. But these principles would, I think, sometimes be difficult of application, for the true history of the previous transactions would sometimes be very difficult to get at; on the other hand, any uncertainty as to the future beneficial interests of the in-comer must evidently operate prejudicially on the interests of a land holding borrower, by unduly depreciating his security, and he might sometimes be sold up

without real necessity. All security offerable by the landholder might be apt, I fear, to be a rather speculative and risky security, and, if so, there would be cases where very improvident landlords, forced to borrow small sums and unable to repay them, might have to part with their estates for very insufficient consideration.

Second.—The re-assessment, guard it as we might, would hardly fail somehow or other to be felt by the tenantry. The in-coming landlord with his poor margin of profit would be sure to do what he could to squeeze his tenants. Mr. Grant sees this himself. Still by careful rules and by care in working we might reduce this danger to a minimum.

Third.—The scheme puts too many people on the land directly any forced alienation takes place. The Government, the middle man as landlord, and the tenants, are quite enough to divide proceeds. The surcharge for the ex-proprietor would be a terrible bar to improvement. I would treat any resident ex-proprietary body, *in esse*, with great tenderness; but any scheme involving the creation of this necessarily discontented class, and providing for their well-being before they have come into being, appears, in so far as it does this, to be open to considerable objection. Where we are not dealing with interests already vested, I would say that when once a man has parted with ownership of his estate, the sooner he quits all connection with it the better, certainly for the estate and the village community, and probably also the better for himself. The weight of these three imperfections is much diminished by this fact that the scheme is such in other particulars as to promise that forced transfers would be few.

Fourthly.—And this is the greatest fault I have to find; the scheme does nothing towards educating the old landholders to be wiser and more competently self-reliant than before. If there be any truth in what I said before as to the inevitable tendency in our times for the ownership in land to become unqualified, in so far as respects right of transfer, then we ought to see that whatever we now do can but provide the old landholders with a breathing time, and our object should be to take care that the breathing time is usefully employed. To fit them for the use of complete power it is almost essential to let them now have some partial power. This is the only way of teaching them. They are not yet able to take care of themselves, but the time must come when they will have to be left to take care of themselves. Let them be put during the interval under tutelage, but let the tutelage be one leading onwards to an intelligent ability to do without it: a guardianship which, like a candle, shall pass away in illumining all within its reach.

17. I am inclined then to think that our end will best be gained, not by devising a modified restricted right of transfer, and applying it to landed property generally, but rather by declaring the larger proportion of each man's estate wholly inalienable, and leaving him the lesser proportion with full and unrestricted right of transfer. Say we were to declare three-fourths of each man's property to be inalienable, and to leave him the remaining one-fourth to dispose of, or burden as he pleased.

The scheme, whatever else its demerits, would not have any of the first three imperfections noted in the last paragraph: and its educating and progressive tendency (if I am correct in thinking that we must in after times come back to unrestricted right of transfer) seems certain. I make no stand about the exact proportions to be declared respectively alienable and inalienable, though I think one-fourth and three-fourths would be about the suitable proportions in the case. But the principle of the scheme, on the one hand, leaves a margin on which the landlord can come and go, and raise money, and which he can do what he likes with, and leaves this available security good at its full value for all purposes; and, on the other hand, it keeps the rest of his property perfectly safe. In using full command over the smaller portion the landlord would be teaching himself the capability to take command over the whole estate when the time came. Those who lost the smaller portion would at all events have learnt a severe lesson without losing their all. I think that a scheme of this sort might probably be safely tried during the currency of the present settlement. I would make inalienability absolutely attached to the originally reserved portion until the expiration of the settlement, no matter how many lives intervened. I would make no re-distribution into the two categories on successions. No mortgage, nor lien of any sort, except a lease, would be enforcible by law over the inalienable portion. And since (as Mr. West points out) leases may be framed so as practically to destroy proprietary right, I would allow no leases of the inalienable portion except for short terms, say a maximum period of two years. In the nineteenth paragraph I shall submit a brief outline of my proposals. I would here only add that, seeing how uncertain we are as to the course of future events generally, and how obliged we are in a case of this kind to work for the present, and how little we can foretell indirect consequences, our legislation, whatever sort of scheme may be adopted, should be avowedly temporary.

18. It remains to summarise the principles which appear to me to form foundation and frame-work for our future measures, and then to outline the proposed measures themselves. The principles have been advocated in the seven foregoing paragraphs and are these—

First.—That in all proprietary tenures, ancestral or acquired, performance of duties attaching to landed property should be more insisted on than it is; that these duties are not defined with the requisite distinctness, but that they are practically capable of specification and enforcement by law, and ought now to be so specified and enforced.

Second.—That the unlimited power of transfer, included in the recently bestowed proprietary rights, has no intrinsic title whatever to inviolability; but that, on the contrary, the question of its retention, modification or revocation ought to be considered as a question simply of expediency in the interests of the landholders.

Third.—That in the case of ancestral property no remedy applying merely to conditions outside the tenure of the land itself offers any reasonable guarantee against the perpetuation of the evils arising from the landholders' present unrestricted power of borrowing; that the

directest remedy is in this case the best; and that a large restriction of the existing power of transfer of proprietary rights is not merely "expedient in the interests of the landholders", but is even absolutely necessary for their preservation in the immediate future.

Fourth.—But that at the same time absolute proprietary title, subject to performance of specified obligations, ought to be recognised, even in the case of ancestral property, as soon as the old landholders shall be fit to enjoy it without destroying themselves: hence our legislation should be of an educational, as well as of a preservative character, leading forward the old landholders gradually to future full freedom, by entrusting them now with a partial freedom. Also that we have no means of predicting whether the effect of the education, and of unknown conditions in the future, will be rapid or tardy; whether the old landholders will be a long time or a short time in fitting themselves for the position to which they must attain ultimately; whether they will be quick or slow in passing "the bridge over the interval between the old things and the new": hence our legislation should be avowedly temporary.

19. And the following is an outline of the measures which I think we might take:

I.—The duties and liabilities attaching to proprietary rights to be codified and enforced under specified penalties.

II.—Proprietary rights in ancestral property to be declared inalienable by the holder in so far as regards three-fourths of each estate. The remaining one-fourth to be alienable at the owner's pleasure.

III.—No ancestral property to be transferable by the holder, either permanently or temporarily (save by way of lease), and no civil process to be executable against it except in the manner provided, and except in respect to debts certified under the following rule.

IV.—Persons intending to purchase or acquire mortgages or other lien (except a lease) on ancestral property, to be required to attend, with the owner, before the Collector, and obtain from that officer a certificate to the effect (1) that the consideration proposed to be given was *primâ facie* sufficient consideration; and (2) that, the present and all previous transactions included, no more than one-fourth of the owner's total ancestral land in the district had been parted with, or that his total estate was not burdened beyond one-fourth of its total value, as the case may be. No property burdened to be certified for sale, except with the consent of the lien-holder. No record of sale or lien to be taken off the Collector's registers, until after the same formalities of attendance by obligor and obligee, or on decree of the civil courts.

V.—No lease of ancestral property for any term beyond two years to be enforceable by law, whether or not possession was given. Parties to be required to go before the Collector to register a lease; and no lease to be good at law unless certified by the Collector to be on his register, and to relate to property not burdened under Rule IV.

VI.—Rules II., III., IV. and V. to be declared in force during currency of the present settlement. The question of retention, modification, or rescission of restrictions under these four rules, at the next settlement, to be left an open question.

20. It will be seen that Rules III. and IV. require the existence of the same sort of machinery as that devised by Mr. Jones to carry out his scheme; and they would secure the same incidental advantage (a very great one) of giving us a repository of the fullest and most certain information concerning all land liens and transfers. Of course estates held under the tenure known locally as "proprietary holdings" would be included. The machinery could readily be provided by aid of tahsili sub-offices at each tahsil head quarters, and by keeping the central office at district head quarters *en rapport* with the sub-offices. The work which they would have to do would be, beyond all comparison, simpler than that required under Mr. Jones' system. Estates would be valued, according to their class of tenure, at so many years' purchase of their "full jamas". The Collector or Sub-Collector would merely have to do with plain and indisputable matters of fact, the only sort of exception to this being in the provision that proof of *primâ facie* due consideration would be required on each transaction. I thought of even striking out this provision; it is not necessary on my foundation of leaving the landholders absolutely free where they are free at all. I think, however, it could do no harm, and that it might in some imaginable cases do good; but the registering offices should certainly not be required to go further than into the *primâ facie* nature of the transaction. To attempt to do more would destroy the simplicity of the plan, and would lead us into a flood of falsification and chicane.

21. I have nothing more to say in the way of upholding the principle of my scheme; but before concluding I wish briefly to notice two points of criticism to which it is certainly more or less open in regard to its working.

They are these —

First.—There would be some unevenness in the valuing estates.

Second.—The dividing each estate into specified proportions permanently alienable and permanently inalienable during currency of the present settlement is a very hard and fast line. No provision is made to allow successors a borrowing margin to repair extravagances or misfortune of their predecessor. The first part of my reply is general, and is this, that these imperfections are admitted. If any scheme free from imperfections can be devised, I shall be the first to wish to give up my own. But at present we seem to be only trying to devise something which shall have as few disadvantages as possible. We can hardly hope, I fear, to hit upon any quite perfect scheme. The above seem to me to be the two more obvious imperfections of my own scheme; and therefore I myself put them prominently forward, leaving other objections not seen by me to be put forward by others. And the second part

of my reply must be directed to examining the degree of the imperfections now perceived. I do not think the first imperfection a very important one. So many years' purchase of ordinary full "malguzari" jama, in the case of rent-free and quit-rent tenures, would be a sufficiently good, though a rough way of calculating value. And as to ordinary malguzari tenures, it is true that this mode of valuation would give an exaggerated value to highly assessed estates and an unduly low value to estates with a light assessment. This is objectionable on the score that those landlords whose conditions presumably would lead them to excessive borrowing would be able to borrow more; while those whose conditions presumably would not lead to more than useful borrowing would be able to borrow less. The objection, however, is perhaps more theoretically than practically important. The full jama is the best basis of calculation on the whole. It would be too troublesome to go into the question of average actual profits for a past term of years; and besides, this would be a shifting standard, whereas the jama is constant. In admitting that the so-many-years-purchase-of-jama standard would not be perfectly even, we merely admit that the jama itself does not fall quite evenly on all estates, even under the best district settlements, some being rather higher and some rather lower than the 8-anna share of total profits which is the theoretical standard. I think, then, that any unevenness of valuation in this way might well be endured,—the more especially that even supposing certified debts came up to more than the real value of the fourth part of any estate, no more than the actual one-fourth of the estate would be available (under Rule II.) for their satisfaction. As to the second of the two objections, it is much more important. Let us take an extreme case to open out its fullest strength. Suppose a prudent and thrifty son to have succeeded a reckless and extravagant father who had lost the alienable portion of a very highly assessed estate. He is in great difficulties; a loan on easy terms would set him free again; but he has no personal security, and so far from having any margin left on which to borrow to improve his estate he is in danger of losing it altogether from revenue default. This is certainly a most extreme case; but there might be some such, there would certainly be a few, and the hard and fast line seems ruinous. However, we might, I hope, expect such cases to be very few, and even here the landholder is not in worse case than a man badly in debt in the pre-proprietary period, and he might by a series of two years' leases hope gradually to recover, and would not lose his proprietary rights. That he would suffer cruelly from ancestral, and not his own, follies is evident; but this is so in many other matters besides those connected with land tenure. That he would suffer too from inability to borrow on any terms, however advantageous, seems more hard. But the hard-and-fast line between alienability and inalienability must be drawn somewhere, and I most intentionally proposed that absolute inalienability of the inalienable portion should last during currency of the present settlement, instead of allowing a re-distribution of alienable and inalienable portions on each succession, because it is better that there should be a few

hard cases than to run the chance of the general pace of alienation being again allowed to get the better of us during our educational interval.

22. Finally, in regard to Mr. West's suggestion* about "family settlements", these need not be provided for if the Chief Commissioner's proposal should take the same direction as my own; or at least if the inalienable proportion of each estate is made sufficiently large and the alienable portion sufficiently small, otherwise, and if Mr. Grant's plan be adopted, they should be provided for. I would also declare the law of preemption to be in force in regard to all joint undivided properties, in order to leave opportunity, where possible, to keep outsiders from possession of alienated shares in such properties; and make them be content with the cash market value in case of forced transfers. This step is much needed. The highest civil court in the Provinces has just declared that there is no preemptive right at all in these Provinces vested in shareholders. And I have now only to add that it occurs to me that there would be no objection to allowing owners of *acquired* property to register their estates as ancestral property if they pleased, such estates on being so registered would come entirely under the rules for ancestral property. I shall follow Mr. Jones' example in refraining from discussing Mr. West's suggestions respecting usury and bankruptcy laws, since their bearing is not quite directly connected with our present topic, and this paper has already become too long. The present subject is one of such vast importance that I trust to be excused for acknowledged want of power of condensation. In submitting my views I only claim for them this credit that they are the result of much patient thought. If this credit be given them I shall be satisfied, and in any case I shall be the first to welcome any better solution of a question which is certainly beset with many difficulties.

* Paragraph 37 of the pamphlet.

Supplementary paper on the land question by Mr. W. B. JONES, *Officiating Commissioner, Nagpur Division.*

HAVING perused Mr. Grant's second paper and Mr. Low's Note, I desire to supplement my former paper by a few very brief remarks.

2. I accept Mr. Low's correction* of my somewhat unguarded phrase "the Baniya fights his way to the land". I admit that *at present* the lending classes regard land more as a security for money than as a desirable possession; but I believe that as time goes on their ideas will change, and I submit that, whether they do or not, the claim of *old proprietors* to protection remains unaltered. A man whose ancestral acres have been sold will derive but small consolation from the fact that another agriculturist, and not his banker, has been the purchaser.

* Paragraph 8 of his Note.

3. Mr. Grant in the 4th paragraph of his second paper states his objections to my proposals; and since I wrote other objections which

certainly require to be met have been suggested to me. For the sake of brevity I put the objections and my replies side by side below:

Objections to schemes set forth in paragraph 19 *of my former paper.*	*Replies.*
(1.) It would greatly increase the number of mortgages.	It would. I regard it as a merit in my scheme that by converting the concealed hypothecation of land, which the power of attachment and sale for debt involves, into a direct mortgage, it brings borrowing landholders face to face with the facts of their position.
(2.) Mortgages being thus more numerous than at present, "the Collector would be altogether overburthened by having to discriminate and pronounce on the character of every loan raised. "The number of such debts including renewals incurred annually in districts may probably be counted by hundreds." (Mr. Grant's 2nd paper, paragraph 4.)	Admitting that they would be counted by hundreds, and refusing to avail myself of the obvious reply that if the scheme is otherwise a good one Government is bound to find the machinery for working it, I submit that it could easily be worked by existing establishments. It is not essential to my scheme, nor should I have proposed, that the Collector should enquire into every debt. If it had fallen to me to draw up rules for working the scheme, I should have instructed Collectors to be chary of interfering with landholders in the earlier stages of indebtedness. I should have told them to point out to all borrowers anything that might appear inequitable or rash in their proposed engagements, and to warn them that whatever terms they agreed to would be enforced to the letter; but I should not have advised Collectors to enquire minutely into debts with a view to a possible exercise of their veto until the register of encumbrances showed that the borrower was becoming *heavily involved*. We must interfere somewhere, and no critic of my proposals will deny that when a landholder is about to become heavily involved the time for interposition has arrived.

(3.) It will harass the lending classes by compelling them to frequent attendance at public offices.

It is not necessary that the lender should attend, except, as at present, for the purpose of registering his mortgage. What will occur will be that the borrower and lender having drawn up a draft agreement, the former will take it to the Collector and get an order endorsed that the loan will be certified. The mortgage will then be drawn up on stamped paper, registered and certified. The mortgagee will not appear at all except for registration.

(4.) "The enquiry in all cases of old debt which form the majority of claims against the land would involve lengthy and difficult examination of accounts."

(Mr. Grant's paragraph 4.)

"There would be no comparison between the amount of labour involved in the investigation of every loan on land and the comparatively simple task of adjusting the affairs of a few insolvents amicably."

(Mr. Grant's paragraph 5.)

In my reply to the 2nd objection, I have shown that in the majority of cases little or no enquiry will be requisite, and in no case will any "lengthy or difficult examination of accounts" be necessary. The question which the Collector will have to decide will be—shall a *new* encumbrance on land be created? Landholders will no doubt sometimes want to borrow to pay off old debts secured on land, but it will not take the Collector ten minutes to turn to his register of encumbrances and satisfy himself of the existence of these debts and the expediency of certifying the new loan. I should suppose that a dozen ordinary applications could easily be disposed of in an hour. I have avoided making proposals for dealing with *debts incurred*, because to be effective they must involve, in some shape or other, the repudiation of contracts; but even if this objection did not stand in the way, I should almost despair of getting the cases of insolvents disposed of with due care. We all know what labour a court of wards' case involves. I should doubt the ability of our present establishments to deal with a permanently large number of such cases.

(5.) The scheme would not be effective, for the landholder would still be subject to distress of moveable property and imprisonment.	I have no fear on this head. Landholders will live through personal troubles as they have done in times past.

(Mr. Grant's paragraph 4.)

No. 2948, dated Jabalpur, the 30th July 1874.

From—C. W. CARPENTER, Esq., Offg. Commissioner of the Jabalpur Division.

To—The Secretary to the Chief Commissioner of the Central Provinces.

IN reply to your letter No. 3646—183, dated 7th November 1873, asking for further information regarding the indebtedness of the landholding classes in the districts of this division, I have the honour to submit a statement compiled from returns obtained from the Deputy Commissioners showing the actual position as regards indebtedness of the malguzars of each district. The Deputy Commissioners are of opinion that the information contained in this statement may be relied on. The Deputy Commissioner of Sagar has included patidars in his return, while the other Deputy Commissioners have only shown the number of sadar malguzars, hence the larger figures shown for Sagar. I have not delayed the submission of this report in order to obtain from Sagar the figures for the malguzars only, because the point of main importance in the return is not the actual number of the malguzars of each class, but the proportion of the indebted malguzars to the non-indebted, and this proportion may be assumed to be given by the Sagar figures as they stand.

2. The state of things exhibited by the return appears to me to be satisfactory. Of the whole number of malguzars of the agricultural class 25 per cent. (the exact figure is 24·8 per cent.) are more or less in debt, and 75 per cent. are free from debt. Considering how reckless the people of this country are by nature in incurring debt, this proportion must, in my opinion, be considered the reverse of large. Of the 24·8 per cent. in debt 3·7 per cent. belong to Class I., *i. e.*, to the class whose debts do not exceed one year's jama; 11·5 per cent. belong to Class II., in which the debts exceed one year's and are less than five years' jama; and 9·6 per cent. belong to Class III., in which the debts exceed five years' jama. If it be considered, as I think it fairly may, that an indebtedness amounting to less than three years' jama is an indebtedness of no real importance as regards the present enquiry, it will follow that the number of malguzars of the agricultural class who are actually labouring under serious incumbrance amounts only to 15 per cent. of the whole body. A more favourable result than this could, I think, hardly be expected.

3. I extract the following passages from the district reports :

Jabalpur.

"The above figures show that as yet the percentage of indebtedness is not very great except in Murwara, and that Sihora Tahsil is in every respect the least burdened with debt.

"It will be noted also that 211 villages are in the hands of mahajans, the greater part in the Jabalpur Tahsil being in the possession of the Seth Gokal Das.

"Many of the old landed gentry belonged to the Jabalpur Tahsil, and as a rule they are all more or less involved owing to their attempting to keep up a state and position beyond their means.

Mandla.

"The above figures indicate a considerable degree of prosperity among the landholders of this district, but the actual degree of prosperity is, I think, even greater than would appear from the figures; for instance there are reported to be 75 malguzars in Ramgarh whose indebtedness brings them under Class I., most of these men I know to be well-to-do, but as their wealth consists in flocks and herds, and not in money (for which they seldom have occasion), they have often to borrow for a short time the money required for the Government kists.

Seoni.

"As far as I can judge that indebtedness in this district does not nearly come up to what I have seen in other districts, such as Jabalpur, Narsingpur, &c., and I see no reason for believing that it is on the increase."

With regard to the last extract, however, it is to be noted that the total percentage of indebted malguzars is larger in Seoni than any other district.

4. Your letter under reply does not invite any suggestions as to the measures which might be taken for the protection or relief of embarrassed landholders, but it may not be out of place if I indicate here very briefly my views on this subject.

(1) I am averse from any sweeping measure, such as the abolition of the sale of land for debt, or any restriction on the transfer of land. The effect of any such measure would certainly at first be unfavourable to debtors ; and it would produce a diminution in the value of property which would be very unpleasing to the landholding classes, aad would probably lead to the measure being misunderstood by the very persons it is intended to benefit. It would be unwise, in my opinion, to introduce any measure of this kind of which the results cannot clearly be foreseen.

(2) Our objects should be, I think—

(a) to put the careless and ignorant borrower on more equal terms with the money-lender ;

(*b*) to diminish the rate of interest on loans by improving the value of land as security.

As to (*a*), I observe that when once the ordinary illiterate peasant landholder has executed a bond in favour of the money-lender, he is as regards the accounts of payments under the bond almost entirely in the hands of the lender. What he pays the lender credits in the way that suits him best; and if the lender omits to bring to credit any of the sums paid the debtor has but little chance of proving payment. After a given number of years the lender comes into court, the debtor has no evidence, and the claim is decreed purely on the lender's books. This is an unfair state of things. The Government ought, it seems to me, to see fair play. The remedy I advocate is to compel the money-lender to file annually a statement of his accounts with any landholder under any bond by which landed property is hypothecated. This statement would be filed in the registry office in which the bond was registered, and would be open to inspection by the debtor. The statement would merely show what sums had been received from the debtor during the year, how they had been credited, and how the money-lender's claim stood at the end of the year. Any attempt at fraud would be then detected at once, and any dispute would be brought at once to an issue.

As to (*b*), I observe that as high interest means bad security, every thing that can be done to increase the value of land as security will be something done towards lowering rate of interest. The chief reason why security is so bad in this country is the untrustworthy and procrastinating character of the people themselves. If then we wish to assist borrowers as a class we should endeavour by the action of our courts rather to facilitate the recovery of loans by lenders than to throw difficulties in their way. One main cause of the high interest demanded by money-lenders from landholders is said to be the uncertainty that exists as to how far the land offered as security has been previously involved. There are at present no means, except personal search in the registry office, or personal enquiry, of ascertaining whether any bond exists involving any given property or not. I would propose that a general register of landed property should be kept up in every tahsil, which would show the liens existing at any time on every share in every village. Such a register once compiled would cost little pains to keep up. An inspection of it would show any money-lender asked to lend money on any property how far he would be safe in lending it. It can hardly be doubted that by such an arrangement the security of loans on land would be increased.

5. The above two proposals are, I believe, practicable, there are many arguments for them, and there is no strong objection that I can see against them so long of course as it is admitted that some move should be made in the matter. If any move is to be made at all, I think it very important that it should be at first by small steps, leaving larger steps to be made afterwards, if necessary.

Supplementary Note by Mr. C. W. CARPENTER, *Officiating Commissioner, Jabalpur Division,—dated Jabalpur, the 4th September* 1874.

Proposals which seem unobjectionable.

IN paragraph 4 of my letter No. 2948, dated 30th July 1874, on the subject of the indebtedness of the malguzars of this division, I stated briefly two schemes by which it appeared to me that some protection and relief might be afforded to the landholder against the money-lender. The first was to require the money-lender to file annually in the registry office a statement of his account with any landholder under any bond by which landed property had been hypothecated. The other was to keep up a general register of landed property in every tahsil which should show the liens existing at any time on every share in every village. The object of the first scheme was to protect the borrower from chicanery by placing him on more equal terms with the lender; the object of the second scheme was to diminish the rate of interest by increasing the security of loans upon land. The effect of these schemes would, I admit, be limited; but I advocate them because they are at any rate unobjectionable, and because it is better to proceed from small steps to large than to make a large step at first at the risk of having to draw back afterwards. I need say no more about them here. If they should commend themselves to the Chief Commissioner I shall be prepared to furnish details for their working.

Objections to sweeping measures.

2. I stated in the same letter that I was averse from sweeping measures. On this point I have some remarks to add. The question of the prevention of the transfer of land has now been almost incessantly under discussion, more specially in the North-West Provinces for more than two years. Various strong remedies have been proposed, but no one of them has met with anything like general assent. The conclusion seems unavoidable that no strong remedy is possible which is not open to serious objection, for if there were such a remedy, it must have been discovered. It may of course be said that as some action is absolutely necessary, it only remains to select the remedy against which the objections are smallest. To this I have no reply to make if it is shown that action is absolutely necessary; but I would still insist on the necessity of selecting not so much the remedy against which the objections are smallest as that against which the objections can be most distinctly foreseen. Anything is better than a step in the dark.

Mr. Jones' proposal.

3. Since writing the letter referred to above I have seen Mr. Jones' Note. Mr. Jones distinguishes between the landholder's legitimate and healthy power of raising money and his unhealthy exercise of that power. We should encourage the one and discourage the other. In this I quite agree: if there is no such thing as a healthy power of raising money on landed property, the evident conclusion is that transfers should be prohibited altogether. It being conceded that there is such a power, the question is—whether we can prevent an unhealthy use of it

without interfering with its healthy use. Mr. Jones would effect this object by permitting no hypothecation of land except under the sanction of the Collector. I can see no objection on principle to this proposal. The State, being the chief proprietor of the land, may fairly claim to be consulted before its co-proprietor, the *malguzar*, takes any steps which may lead to a transfer of proprietorship. But the question is—is the scheme workable in practice? This is the point the which I cannot feel satisfied. Mr. Grant has pointed out what intricate enquiries would often be necessary before sanction would be given or refused. Has the Collector time to make these enquiries? Mr. Jones contemplates the power of sanction being given to Assistant Collectors and Tahsildars; but I take it that such a power would be far too important to be entrusted to any inferior officer, and that practically the final decision must rest with the Collector. Could any but an ideal Collector do the work?

Again the difficulty of decision would be very great. The lender who would be wishing to lend, and the borrower who would be wishing to borrow, would both be interested in making it appear that the loan was necessary, and deception would be often resorted to. But even if there were no deception, decision would be often difficult. Take the case, one of those contemplated by Mr. Jones, of a borrower representing that he required money to pay the Government demand. Under what circumstances should such a loan be allowed as a 'healthy' encumbrance? Nothing can be more opposed to the spirit of our revenue system than that the Government demand should be paid with borrowed money. Yet there may doubtless be circumstances in which a loan for such a purpose would be permissible, and Mr. Jones actually goes so far as to name it as one of the purposes for which land may be properly encumbered, and for which a loan should be immediately sanctioned by the Collector. Is it not certain that if the Collector is to exercise discretion in sanctioning loans ostensively taken for this purpose, he will not only have a most difficult task, but his decision in many cases will be arbitrary, and influenced by the greater or less knowledge of the parties which he may privately possess? In this way it seems inevitable that great diversity of practice would result between district and district and between successive Collectors in the same district; and an element of uncertainty would be introduced into money dealings which would probably be injurious, and would certainly be displeasing to both lenders and borrowers. It may of course be said that, even allowing all this, some good would still result, for in some cases at least improper loans would be prevented, and this small gain would be better than no gain at all. But it seems a question whether it is expedient to introduce a system, of which we cannot distinctly foresee the working, in order to attain such partial results.

Rigidity of the Government demand a main cause of indebtedness of landholders.

4. In paragraph 11 of his Note Mr. Jones refers to a proposal made by myself in a paper* in the *Indian Observer* to remove the main cause of the indebtedness of landholders by relieving them from part

* August 30th, 1873.

of the pressure of the Government demand in years of scarcity. That proposal was made with reference to the state of affairs in the North-West, and I am not prepared to advocate precisely the same scheme for the Central Provinces. The argument on which I proceeded was that the demand of the Government, even where it is moderately assessed, must undeniably form the largest item of the landholder's expenditure. Under our system that demand is inflexible. Seasons vary, but the demand varies not. And it is not surprising that the result among an improvident people, who will not lay up for a bad season from the profits of a good season, is what we see; and that the ruined landholder dates his ruin from the year when the crops failed, and the tenants could not pay their rents, and he had to borrow to meet the Government demand. Now the result of this system in the North-West Provinces has been that in some districts thirty or forty per cent. of the land has changed hands during the thirty years' settlement. In the present revision of settlement the revenue has been largely raised. I accordingly argued that, in so far as the pressure of the revenue is responsible for the indebtedness of landholders, there is every reason to expect that the evil we are trying to avoid will be now enhanced instead of diminished. On these grounds I suggested a scheme for easing off the demand in bad seasons. The assessment has now been made on the full assets which the land is capable of producing under efficient management. There is hardly anywhere room for increase of cultivation. The settlement is in fact based upon the average of fair seasons. It follows that in years of undoubted failure, such as recur in Northern India every eight or ten years, the landholders will be justified in claiming some consideration from the State.

Remedy in the Central Provinces.

5. In the Central Provinces the circumstances are different. There is probably everywhere room for increase of assets. The demand bears a lower proportion to the profits, and is not such a pressing item in each landholder's expenditure. There is not therefore, I imagine, the same necessity for an organised system of relief. But I still contend for the principle involved. If it is true, as I maintain, that the rigidity of the Government demand has to answer for a great part of the indebtedness of landholders, then the fact should be distinctly recognised, and no opportunity should be lost of removing as far as possible the evil effects of that rigidity by granting remissions and suspensions of demand whenever bad seasons render them necessary.

Exemption of land from sale by civil courts.

6. If a strong remedy is considered absolutely necessary, I should recommend that which was proposed in the first instance by Sir William Muir, and which was advocated by Mr. Crosthwaite as part of his scheme in the *Calcutta Review*, viz., to exempt land from sale in execution of decree, and to leave it liable only to transfer to the creditor for a term of years. The effect of this measure would be to limit the landholder's power of borrowing to the value of a lease of the land for the specified term, because the money-lender would

not lend on the security of the land more than he could recover by going into court. By fixing the term at a short period, say eight or ten years, landholders would be effectually prevented from encumbering their estates beyond a moderate extent. If a landholder required more money than he could raise upon this limited security, he would be compelled to sell his estate, or part of it, outright, and it is evidently better that he should do this and get a full value for his property, than allow his estate to drift out of his hands in satisfaction of a debt, the greater part of which is composed of interest. The measure is of course open to obvious objections; but it has this great advantage over other proposals, that the objections against it *are* obvious, and can be seen and weighed beforehand. It is self-working, and does not depend for its success on the ability or discretion of human agents.

Objections to the measure.

7. The principal objection to the measure is that for some years at least it would accelerate, instead of retarding, the alienation of land. The measure would be only prospective, and it would afford no relief to those already in the money-lenders' shackles, but, on the contrary, by diminishing their borrowing power for the future it would bring their affairs the sooner to a crisis. It would thus cause hardship to many at the outset, and would doubtless be received with disfavour. The second objection is that it would raise the rate of interest. Interest depends not merely upon the sufficiency or otherwise of the security, but on its convertibility. One of the chief drawbacks to land as a security, even at present, is the difficulty of converting it speedily into cash, and this difficulty would be greatly increased when the security consisted not of the land itself, but only of its usufruct for a certain number of years. The security being diminished in value, the rate of interest would rise. These two objections seemed to me to be fatal to the measure in a Province like the North-West, where the unrestricted disposal of land has been permitted for so long, and where a violent change would tend to shake the credit of Government. I accordingly opposed it there. But in the Central Provinces, where proprietary right has been so recently conferred, the condition of things is different. The immediate evil effects of the measure would sooner pass over, and the lasting good effects would ensue more quickly. If any strong remedy is to be adopted this is that which I should advocate.

Relief to landholders already involved.

8. It remains to consider whether anything can be done to save the landholders who are already involved. I can see no remedy, except to give Collectors increased "courts of wards" powers. Such measures as those referred to above can of course have no retrospective effect. If an estate is involved beyond retrieval, it must change hands; there is no help for it. All that can be done for an involved estate is to apply to it the judicious management which the owner is unable to apply. It would be unjust to do more at the expense of the creditor, and it would generally be unwise to do more for the benefit of the owner. At

present the court of wards can interfere in the case of minors, lunatics, and persons obviously disqualified from managing their estates. Why should not the latter definition be extended so as to include persons who had proved themselves incapable of managing their estates by running into debt beyond their means? This would enable the Government to interfere in all cases in which interference is desirable.

Necessary considerations.

9. I have only to add that if power were thus taken to oust reckless proprietors and to place their estates under the management of the court of wards, it would be necessary to keep two points in view:

First.—No injury must be done to the creditor. He must get his money (so far as he is legally entitled) in the way he wants, and as soon as he wants it. If the recovery of debts is made more difficult by the action of Government, a rise in the rate of interest will be the immediate consequence.

Secondly.—If the Government interferes to save estates, it must interfere while there is still something to save. Here I think is the great difficulty as regards small estates, viz., the difficulty of ascertaining when they are involved. This difficulty would be met, so far as it can be met, by the system of village registration of mortgages proposed in my former letter.

Minute by the Honourable Sir A. Hobhouse,—*dated the 28th April* 1874.

This is a very singular problem. That peace and civilization should alter the relations between the trading and the military classes, the educated and the uneducated, and that land should pass from one to the other, is a phœnomenon with which we are familiar enough. The change, though not without its painful incidents and its political dangers, is an extremely beneficial one when it comes of the spontaneous growth of a nation in intelligence and the arts of peace. But then it comes slowly, and many generations pass before a revolution is effected. The peculiarity of the present case is that the change is being compressed into so short a period of time.

2. That this is due to the presence of a foreign government, quite different in type from the dynasties it supplanted, can admit of no doubt. In the first place, by keeping the peace, by securing that he who sows shall reap, and by ascertaining and limiting the amount of taxation, we have given to land a kind of value which it did not possess before, and have made it an object of desire to those who possess money. In the second place, we have set up a powerful machine for doing justice and holding people to their obligations, so that a debtor must pay to the extent of his means, and cannot, however lawless or remote, set his creditor at defiance. The change that is taking place is spontaneous enough, for it is not forced upon the people by any law, but springs only from their gratification of their natural desires, which, when embodied in

contracts, the law recognises and enforces. But it has been fostered into excessive activity by the foreign introduction of two social and political factors of great power. Two essential elements of civilization and national growth—a system of revenue and a system of legal administration—have been brought to bear upon society before it has made corresponding advances in general intelligence, in habits of prudence, or in its sense of the importance of enforcing obligations.

3. I don't suppose these remarks are very new, but I make them because it seems to me that a great many officers have written on the subject as if it were isolated and capable of separate treatment if only treated forcibly enough, and without seeing that it is part and parcel of the system on which we have endeavoured to govern our dominions for at least eighty years. There seems, however, to be much less tendency in the later papers than in the earlier to call for an abatement of the obnoxious symptoms by trenchant remedies; and probably the earlier writers in many cases had their judgments disturbed by the recent events of the mutiny.

4. There may indeed be some parts of the country where society is of so simple and primitive a structure that we should be justified in treating the possessors of land as not qualified to be its owners for any purpose but that of personal use. Such is said by some to be the condition of Jhansi, and by high authorities in the Central Provinces to be the condition of those provinces. I cannot profess to judge of things so novel to me; but if the case be so, we have surely erred in giving to these countries our revenue system and our legal system, and should re-trace our steps by subjecting them in all things to a more arbitrary form of government. To leave people in the enjoyment of valuable interests in land, and to say that they shall have no power to alien or change those interests, or shall not make them available to satisfy their creditors, would be, as I think, to increase confusion and not to abate it.

5. Leaving these very exceptional cases, I think that Mr. Lyall and Mr. Bayley are right in treating the question of absolute prohibition of sale as having passed beyond the pale of practical questions. The practical question is whether we can do anything to retard artificially the natural movement which our mode of government has artificially, though incidentally, accelerated, and which is going at a dangerous pace. For this purpose several palliative measures have been proposed.

6. Those proposed by Sir George Edmonstone are partly taken from an able paper by Sir John Strachey, dated the 19th May 1859. The first is that a debtor's moveable property shall first be exhausted before his land is taken. I see no objection to this except that it will involve another application to the court. But I cannot think there are many cases in which the rule would have much beneficial effect, or much effect at all. Sir John Strachey couples it with a proposal that the decrees of subordinate civil courts shall not affect land; but this, it is said, will only throw a great amount of work on the higher courts.

7. The next is more important. It is proposed that the Collector should make a valuation of the property, fix an upset price, and buy it in if that price is not reached. He is then to enquire the reasons why the property will not sell, and, if necessary, revise his valuation and sell again. The second time the sale is to be without reserve. Some plan of this kind may prove a material protection to the debtor, though I am afraid if it once came to be understood that the property would be put up to a second auction without reserve, the purchasers would trust to that, and would not particularly care to reach the Collector's upset price. If so, the effect would be to saddle the land with the expense of two sales instead of one. The scheme would require careful framing and working. Sir John Strachey says it is borrowed from the French Code, and perhaps we might learn how it works in France.

8. I would venture to add to this that the principle of preemption might be extended, and that in all cases of joint estates the land might be offered to the co-owners at the upset price, or at that price which the Collector satisfies himself is the best he can get.

9. The next proposal is that the Collector should investigate and decide summarily all claims to lien on the property about to be sold so as to give the purchaser an indefeasible title. This is not one of Sir John Strachey's proposals. I cannot see how the Collector is to do anything of the kind. If he is, the whole jurisdiction had better be made over to him bodily. The proposal assumes that claims on land about to be sold are simpler than other claims, whereas they are of precisely the same kind. Probably, indeed, the decree which gives rise to the sale was for some simple money transaction, and attended with far less difficulty than claims relating to land of which the debtor may be the apparent owner.

10. The proposals made by Mr. Bayley now and in his Note of the 22nd May 1870, and by Mr. Stephen in his Note of the 20th June 1870, would confer some large discretion on the Collector. I confess I cannot make out what the Collector is intended to do. Mr. Bayley says his discretion is not to be a vague one, and is only to extend to his mode of action, but that he is to be compelled to act, and he refers to Mr. Stephen's definite proposal. Mr. Stephen proposes that a creditor proposing to sell shall give notice to the debtor, and that the debtor may petition the Collector to prevent the sale, and that the Collector shall be bound to hear the petition. But then he is only to interfere in all cases in which he thinks it just and equitable. When is he to think it just and equitable? Is he to be guided by political reasons? Or by compassion for the debtor? Or by reference to the reasonable or unreasonable nature of the claim? Without guidance in these respects the Collector will be as much bewildered as the Punjab authorities have in fact found themselves to be. It is their application for guidance which raised this question and caused the circular to Local Governments in 1870. In the paper to which I have before referred Sir John Strachey warns us of this difficulty. Speaking of the

plan of making the Judge's sanction necessary for sale he says—"Nor do I think the proposal to make the sanction of the Judge necessary to sales a good one if it goes no further than this. It must be clearly laid down under what circumstances the Judge can refuse his sanction. Nothing can well be worse than to leave such questions to be decided, as I understand they are in the Punjab, according to the opinion or caprice of individual Judges." The same principle applies to Collectors. And I do not gather what rule it is proposed to lay down for their guidance.

11. When the Collector does interfere, the thing he is to do is to frame a scheme for the re-payment of the creditor in full—

(*a*) out of the product of the land, after setting aside a reasonable amount for the maintenance of the owner,

(*b*) or by mortgage,

(*c*) or by the sale of part,

(*d*) or in any other manner.

I have very little doubt that if Mr. Stephen were here to answer the question I have put in the preceding paragraph, he would say that of course he meant the discretion of the Collector to be guided by the thing he was to do, and that he was not to think it just or equitable to interfere unless he could see his way to paying the creditor in full within reasonable time. So limited, the proposal seems to me sound and feasible as far as it goes. But I am afraid it would touch a very small number of cases. A great many officers tell us—and it is only consistent with one's experience elsewhere—that a sale is the *ultima ratio*, before reaching which every other plan has nearly always been tried and found wanting.

12. When I say that the proposal is feasible, I am assuming the existence of a sufficient machinery for the purpose. To devise satisfactory arrangements between debtor and creditor takes a good deal of time and thought, and I do not believe that the existing staff of the Collectorate can do such a thing. I always find the Collector referred to as the *Deus Ex Machinâ* who is to work every new scheme that the Government set on foot; but my belief is that they are already overburdened; that they are now doing ostensibly more than any man can really do; and that if we add another laborious task, they must either neglect it or something else. As for an ignorant hasty interference between debtor and creditor, I think it will do more harm than good.

13. It will be seen that, in my opinion, some of the proposals before us are sound in principle, and if carefully devised in point of detail, and carefully worked by a sufficient staff, will prove to be palliatives of the mischief complained of. I suspect, however, that they would operate on a very small scale.

14. I have criticized the suggestions of others, and have not made any of my own, because from the nature of the subject I am

unable to do anything but apply general principles to the particulars of which others have much more knowledge. I will add, however, that if the graver view of the case stated in these papers be the true one, it requires far more stringent and radical remedies than any now before us. If indeed there is substantial truth in what is said about village Shylocks, we ought to set up village Portias to do the glaring and splendid injustice that is done in the fable. But, exaggerations apart, we find a man like Sir John Strachey, who treats the subject with equal sobriety and ability, writing thus—he is speaking of the terms on which money can be borrowed: "The conditions depend far more upon the degree of simplicity in the borrower and of rapacity in the lender than on anything else. Our civil courts have unhappily been the ready instruments for these dishonest operations, and our system of judicial procedure, instead of checking, has stimulated and exaggerated them. No reform of our courts will alone meet this great evil: and I believe it to be of the highest importance that the Government should not continue to shut its eyes to the ruin in which this wide-spread system of fraud, or of something little better, is involving the proprietors of the land. They are incapable of protecting themselves, and the Government must interfere in their behalf, or bear, in the opinion of the people, all the discredit of their ruin". From his administrative point of view he recommends a system of county banks for the purpose of making loans to the landowners. From my point of view I say that if what he has said or the major part of it be now true, it can only be met by a large increase of correctional power over contracts to be vested in judicial tribunals, and strengthened by a usury law. In our own country the courts of equity invented laws for the protection not only of persons of weak character and immature age but of expectant heirs, of reversioners; in fact, of all persons placed under temptation to make improvident bargains. When they came across the usury laws they made them subject to the more sweeping law created by themselves, and moulded them so as to produce fairly reasonable, though not very legal, results. They laid hold of mortgages; under which the mortgagee became absolute owner if the debt were not paid by a certain day, and declared that the parties did not mean what they had said, but that, notwithstanding the absolute forfeiture, there remained an "equity of of redemption" in the mortgagor. This action of the Court of Chancery was one of the causes which retarded the transfer of land from the military to the commercial classes. And if the same object is to be aimed at in any part of India, I believe it must be aimed at in the same way, and cannot be attained in any other.

15. Of course there would be a great difficulty arising from the weakness of our judicial staff. The English laws I speak of were devised and applied by great lawyers and statesmen. And if we had Judges of sufficient knowledge and boldness to create, and sufficient wisdom to apply, such laws, they would probably be found suitable to many parts of India. But even as matters stand, I believe them to be the only effectual remedy for such a case as Sir John Strachey describes.

16. To sum up: I do not believe in the practicability of prohibiting sales of land unless the prohibition is accompanied by other retrogressive steps in our mode of government. I do not believe that the proposals of Sir George Edmonstone, Mr. Bayley, and Mr. Stephen will do anything but administer trifling palliatives to the mischief. I do believe that sensible Judges, armed with a large power of moulding improvident bargains, and strengthened by a usury law in the background, may administer more than a trifling palliative. I admit that such a remedy would be attended with danger, and I think that our adoption of it should depend on the opinion we form as to the existence of danger from the present state of things in the various parts of the country.

A. HOBHOUSE.

No. 4 (Legislative), dated India Office, London, the 26th December 1878.

From—Her Majesty's SECRETARY OF STATE for India.

To—His Excellency the Honourable the GOVERNOR IN Council, Bombay.

I HAVE to acknowledge the receipt of the despatch from Your Excellency in Council dated the 30th September last, No. 11, transmitting for my information copy of a "Bill for the relief of Indebted Agriculturists in certain parts of the Presidency of Bombay", which has been introduced into your Legislative Council.

2. On the 16th November I despatched to Your Excellency the following telegraphic message:

"Delay proceeding with Indebted Agriculturists Bill. Despatch follows."

3. I now proceed to state the reasons which induce me to doubt whether the provisions in the measure before me are at all adequate for grappling with the evils which have been so prominently brought to light in the report of the Deccan Riots Commission.

4. When that report arrived in this country in May 1876 Lord Salisbury was so deeply impressed with the distressing picture therein given of the agricultural population in the Deccan, that he awaited with great anxiety some communication from the Government of India as to the steps intended to be taken. But none such having arrived after an interval of nearly a year and a half, His Lordship appointed a Select Committee of his Council to consider the report.

5. The Committee began to sit in November 1877, held several meetings, and examined some experienced witnesses well acquainted with the Bombay Presidency; but before they had terminated their inquiries, a despatch was received from Your Excellency in Council in February of the present year enclosing the draft of a Bill for the relief of Indebted Agriculturists in the Presidency of Bombay, and which you desired to have introduced into the Council of the Supreme Government.

6. That Bill contained three main principles:

(1) That the courts should be obliged to enter into the merits of every money claim, whether secured by bond or not, and should only award such sums, whether for principal or interest, as they deemed just, and should in no case give compound interest or a larger amount of interest than the principal sum.

(2) That the principle of the Insolvent Act, as prevailing in the Presidency Town, should be applied to the Deccan agriculturists.

(3) That land should not be sold in execution for debt, unless specially pledged in a bond duly registered.

Lord Salisbury, although not fully satisfied with all the principles contained in this measure, thought the occasion for attempting remedial legislation to be so urgent that he sanctioned by telegram the introduction of the Bill, being quite willing that the experimental legislation contemplated in the Council of the Governor General should be attempted. I also am of the same opinion.

7. Leave was accordingly given for the introduction of the Bill into the Council of the Governor General on the 28th June last, but, for reasons which have not been transmitted to me, the Government of India preferred, instead of one comprehensive Act, that your Government should pass a law dealing with some minor points relating to interest and to ancestral debts. The Bill which I have now before me is the result of the action of the Supreme Government.

8. I can well understand the difficulties which have deterred the Government of India from dealing with this subject as a whole, and which have induced them to leave minor points to be disposed of by the Local Government; but if the evils sought to be remedied are capable of being eradicated by legislation, I am clearly of opinion that they should not be dealt with piece-meal.

9. The very able report of the Commission and the mass of valuable information contained in the appendices enable us, I think, to draw the conclusion that some of the great causes which lie at the bottom of the poverty of the Deccan are wholly beyond the reach of the legislator, and are inherent in the national character and in the customs which have prevailed for countless generations. The Deccan ryots, like the general mass of the cultivating classes in other parts of India, are entirely without capital, and are driven on the first bad harvest into the hands of the money-lender, not only for the means to till their fields, but for food to keep themselves and their cattle alive till the crops of the next season are matured. This fact has created the system of borrowing at high interest which prevails so largely amongst the agricultural population, and has made the existence of a money-lender in a Hindu village as essential as that of a ploughman.

10. The normal condition of a Hindu cultivator is much aggravated by local circumstances in parts of the Deccan. The soil is sterile, the climate is precarious, a good crop being in some parts obtained only once in three years, the fall of rain is scanty, the peasantry, though a sturdy and ordinarily a law-abiding people, are described as "utterly uneducated, and with a narrow range of intelligence". It is obvious that the causes mentioned in this and the preceding paragraph are not to be easily modified by any legislative Act.

11. The districts in which the riots took place came into British possession in 1819, and at that period and for 20 years afterwards divers causes, such as the ravages of Holkar's Army and the dreadful famine which followed his campaign—a famine which was repeated two or three times during the first 20 years of the century—the subsequent heavy fall of prices, and the consequently oppressive weight of the old Mahratta rate of assessment which was at first continued by the Government of the day, all these had produced an amount of poverty and ruin which the settlement officer writing in 1838 found it impossible to describe.

12. The Government of that day, however, made strenuous efforts to better this state of things. They reduced the assessment from an average rate of 13½ annas to 7 annas; they gave the cultivators for the first time fixity of tenure; and they abolished extra cesses.

13. A Resolution of the Government of Bombay, dated 30th August 1875, describes the satisfactory results of this new settlement of the land: "In 1838 more than 50 per cent. of arable land was waste; in 1871 only 1 per cent. Population increased, during the term of the settlement, 39½ per cent.; agricultural cattle 19 per cent.; ploughs 22½ per cent.; carts 270 per cent.; and wells 40 per cent. Government land was unsaleable in 1838. During the last five years of the settlement examination of the registration records showed that it fetched from 10 to 52 times its assessment. Thirty years ago there were no made roads, and communication was costly and difficult; the taluka is now traversed by the railway and by several excellent roads, and the increase in the number of carts indicates the extent to which the people avail themselves of the new facilities of communication with markets."

14. Satisfactory as this picture of progress is (and similar ones may be produced from all parts of India), there is undeniable evidence in the report before me that the very improvements introduced under our rule, such as fixity of tenure and lowering of the assessments, have been the principal causes of the great destitution which the Commissioners found to exist.

15. The saleable value of the land greatly increased the credit of the ryot, and encouraged beyond measure the national habit of borrowing, which I have before observed on. High prices led to

extended cultivation, to more expensive modes of living, to larger outlay on the great stimulant to Hindu expenditure, marriage ceremonies. Recourse to the money-lender became then more frequent than before, and the class of money-lenders competing for custom increased in most undue proportions. The first fall in prices, and the first bad harvests, both of which had occurred in these districts, found the cultivators as poor as ever, but encumbered with an additional mass of debt. Still no one would advocate as an amendment of the law that we should abolish fixity of tenure, or increase the assessment on the land.

16. Up to this point, then, I can see no opening on which the legislator can enter with effect. In all civilized societies there is a vast amount of suffering and destitution, very lamentable to contemplate, but which it is wholly out of the powers of the State by any direct action to eradicate. All that Government can do is to take care that its own institution shall not aggravate the misery which so often follows the spontaneous action of the population.

17. This last observation brings me to the consideration of the Bill now before me. Your Government has distinctly perceived that the courts of justice we have instituted, and the law they administer, operate most harshly, and frequently with great injustice, on debtors who form the great bulk of the population. Here, therefore, is an opportunity for the beneficial interference of Government. Both the Bills which I have alluded to above have been framed with the view of mitigating the law, and of extending the powers of Judges to modify the contracts entered into between man and man.

18. I may say at once, after full consideration, that the Bill introduced into Your Excellency's Council appears to me to be so dependent upon the character of the Judge, and so likely to be defeated by agreements between helpless debtors and wily creditors, that I cannot suppose it will lead to any substantial results.

19. The question then remains as to what shall be done, for it is clear that some alteration in the existing law is imperatively called for. A fitting measure can only be properly prepared in India. For the consideration of the two Governments I proceed to notice the most salient points which have presented themselves to me on this head in the report and appendices of the Commissioners and the lines of improvement which have suggested themselves. And I shall transmit a copy of this despatch to the Government of India, with the desire that they shall immediately apply themselves to the subject in a comprehensive manner.

20. Under Native Government, it seems no assistance was ordinarily afforded by the State to a creditor for the recovery of his debts. No court of justice was open to him, and he was left to his own devices to extort what was due, Government winking at very forcible measures that were occasionally employed. The result was not so bad as might have been expected. It speaks well for the national character that

contracts were rarely repudiated. And the Commissioners observe that in these proceedings "honesty was the best policy for the ryot, and caution was a necessity to the money-lender".

21. On the establishment of our rule, however, courts of justice were established everywhere.

22. It is abundantly manifest to me, on the evidence collected by the Commissioners, that no evil has been so loudly, and I must say so justly, complained of by the people as the action of the courts. The extreme severity of the law on debtors has been pointed out by the report.

23. The Judges are only the instruments for enforcing the law as it is, and no blame is imputable to them. But the extracts from the statements of the Judges themselves, cited by Mr. Colvin, demonstrate completely that, irrespective of the hardness of the law, they are incapable of administering justice between debtor and creditor.

24. One Judge says—"the Subordinate Judges in this district are much overworked, and really have not time to investigate cases properly and to weigh the evidence"; another says—"our Subordinate Judges are too hard-worked to allow, even if they were inclined to do so, of their going into the history of such cases. The court which was inclined to go into the old history of a case would have nothing but the sowkar's books to go upon if he produced them".

25. Another Judge enumerates the frauds perpetrated by the money-lenders, and states that they are practised with impunity. When "the deluded kumbi * * * is dragged into court, he is unable to answer the claims, or, if he states a defence, he is not in a position to prove it".

26. The Commission also assign another reason for our courts being mere instruments in the hands of the money-lenders, namely, their great distance from the home of the debtor. A money-lender may easily instruct a pleader to take out process against a debtor in a court 40 or 50 miles distant at little cost to himself, but it is ruin for a cultivator, dependent on his daily labour, to absent himself for days together from his field, even if he has a valid defence.

27. Here then it is quite clear we have evils produced by the legislature itself, and which it is within the competence of Government to extirpate.

28. I am extremely unwilling at any time, but especially now, to suggest any increase to the cost of administration; but if it is made manifest that our courts of justice are inefficient in these special cases, and that our Judges admit they have not time to inquire into the real facts by a thorough investigation, I would suggest that although an addition to the cost of administration is very much to be deprecated, it is imperative to remedy the defects here pointed out. A re-distribution of expenditure might be made, and I observe that it is stated

susceptibles d'appel lors qu'ils infligent une pénalité supérieure à cinq francs d'amende; l'appel est porté devant le tribunal correctionnel (Code d'Inst^{on} Cr^{lle}, art. 172 et suivants).

2°. En *matière civile,* ils statuent,—

En dernier ressort, sur toutes actions personelles ou mobilières jusqu'à la valeur de 100 francs.

A charge d'appel devant le tribunal civil, sur toutes demandes, contestations, &c., excédant cette somme selon les distinctions de la loi du 29 Mai 1838, modifée le 2 Mai 1855.

3°. En *matière de conciliation,* ils doivent s'efforcer de mettre d'accord les parties en cause, de façon à prévenir le procès par un arrangement aimable dont ils dressent procès-verbal.

Cette démarche est le préliminaire obligatoire de tout procès entre parties capables de transiger et hors le cas d'urgence; toute demande en matière commerciale est reputée urgente, et dispensée, par suite, du préliminaire de conciliation. (Code de Procédure Civil, Art. 49.)

N. B.—The appointment of juge de paix, I am told, is held pending the pleasure of the governing authorities, and is in no way limited to a certain number of years.

F. J. GOLDSMID.

No. 2.

Hotel de Louvre, Paris.

24th December 1877.

MY DEAR SIR ERSKINE PERRY,

THE authorities tell me they cannot give me a fair average of a rural canton, as they vary so considerably in extent, and a large extent may sometimes have but a small population; but a highly instructive and useful volume called "Statistique de la France",* of which the first volume has been lent me, shows that this country has a superficies of 52,857,675 hectares, and that there were in 1872 no less than 2,857 "justices de paix" for a population of 36,102,921. This book, published by Guillaumin 14, Rue Richelieu, in 1875, might, doubtless, be procured at Hachette's or Baillière's, in London. In the meanwhile I make an extract to the point:

* Par Maurice Block.

"Le traitment des juges de paix, réglé par la loi du 21 Juin 1845, et por l'ordonnance du 2 Novembre 1846, est le même que celui des juges de tribunaux de première instance, dans les villes où siégent ces tribunaux; dans les autres localités, il est ainsi réglé par l'ordonnance du 2 Novembre 1846, et par trois décrets, du 23 Août 1858, du 22 Septembre 1862, et du 12 Novembre 1868; 3,000 fr. dans les cantons composant les arrondissements de St. Denis et de Sceaux;

3,000 fr. dans les villes de 39,000 âmes et au-dessus (Roubaix, Tourcaring) ; 2,700 fr. dans les villes de 20,000 âmes et au-dessus (Arles, Cette, Elbeuf, Le Creusot, et Mezières, chef-lieu de département) ; 2,400 fr. dans les chief-lieux d'arrondissement où ne siége pas de tribunal de première instance, et qui ont mois de 20,000 âmes (Argelès, Bonnac, Commercy, la Palisse, la Tour-du-Pin, Manléon, le Puget Théssiers, et Poligny, &c., &c."), *i. e.*, briefly, 2,100 francs for a minimum population of 3,000; 1,800 francs where less than 3,000. It appears, moreover, that 2,051 "juges de paix" belong to the last class, and 248 to the penultimate. Paris "juges de paix" (there are 20) have 3,000 francs besides an office allowance of 1,500 francs=9,500 (380*l.*).

As regards the average size of a rural canton, I take the letter "A" in the Directory of Departments, &c., and strike an average of cantons coming under that letter,* I then find the average of hectares in 11 Departments (specified in margin). The result is that there are about 30 cantons in 1,560,000 acres (634,458 hectares). Each "juge de paix" would then have an extent of 52,000 acres.

		Cantons.			Cantons.
* Ain	... having	36	Ardennes	... having	31
Aisne	... do.	37	Ariége	... do.	20
Allier	... do.	28	Aube	... do.	26
Alpes Hautes	do.	24	Aude	... do.	31
Alpes Basses	do.	30	Aveyron	... do.	42
Ardèche	... do.	31			

On again looking over Block's Book of Statistics I find 91 Departments with—

363 arrondissements.
2,850 cantons.
37,386 communes.
38,067,094 population in 1872 (an average of 13,346 to the canton).
36,472,031 do in 1866.

Believe me,

Very truly yours,

F. J. Goldsmid.

P. S.—I make the hectare = 2½ acres, less ⅛th of a rood. The "Annuaire" of the "Bureau des Longitudes" makes it 247,114,316 acres.

As regards "conciliation", it is considered here to work admirably. They have endless arguments in its favour; but their higher Judges have not the power of using it as ours in England (which my informant seemed to lament). It is the special privilege of the "juges de paix".

No. 222, dated Fort William, the 26th February 1879.

From—C. Bernard, Esq., C. S. I., Offg. Secretary to the Government of India, Home Department.

To—The Secretary to the Government of Bombay.

I am directed to communicate, for the information and guidance of His Excellency the Governor in Council, Bombay, the following observations and instructions on the subject of the despatch No. 4, under date the 26th December last, addressed by Her Majesty's Secretary of State to the Government of Bombay regarding the measures to be taken for the relief of the ryots in the Deccan with reference to the facts stated and the opinions expressed in the report of the Deccan Riots Commission.

2. The report in question was reviewed at length in your letter of the 6th April 1877, No. 2202, in which the subject was dealt with under three heads, namely,—

(1) the nature and causes of the riots themselves;

(2) the defects in the revenue administration which may have contributed to cause the riots, and the remedies advisable; and

(3) the effect of the civil law and civil courts on the the Deccan peasantry and the measures advisable for altering the law or reforming the courts.

Under the first head the Bombay Government shewed that the riots were confined to an arid tract of the central Deccan comprising parts of the four Districts of Poona, Sattara, Ahmednagar and Sholapur. There was comparatively little serious crime or violence. The hostility of the ryots towards their creditors, the money-lenders, lay at the bottom of the disturbances. This feeling had been increasing in strength for some time. The peasantry are poor owing to the sterility of the soil and the extreme variableness of the seasons. They habitually contract debts beyond their means; most of them are said to be "steeped in debt". Since 1836 the ryots have been able to give a lien on their lands to their creditors, who consequently gained more and more power over the ryots. From 1850 to 1866 there was a period of great good fortune for the Deccan ryots. Railways and roads were made through the country; other public works were constructed; money was spent largely; and the cycle of prosperous years culminated in the era of the American war, when Deccan cotton fetched three to six times its usual price, and the market price of other agricultural products rose enormously. But after the close of the American war a great fall of prices took place. During the period of plenty the ryots had, many of them, paid off their debts; but they had contracted costly habits of life; and these habits they could not (or did not) suddenly discard. Thus, the peasantry soon became involved in debt again. The money-lenders, most of whom belonged to an alien race whose home was in Rajputana, had little sympathy for the peasants. Civil courts had been multiplied, and their

procedure had been rendered prompt. Creditors took their debtors into court, obtained decrees, sold up the ryots' land, and reduced the ryots to the position of serfs. Hatred towards the money-lenders became more bitter, discontent with the procedure of the courts was engendered, and in March 1875 the popular feeling found expression in attacks and outrages on village bankers. One feature of these outrages was that the account books and bonds found in the money-lenders' possession were destroyed by the rioters.

3. On the second head, the Bombay Government, differing from the opinion of two members of the Commission, considered that the recent revision of the land revenue assessment in the Deccan, the principles on which that revision was conducted, and the results of that revision, had no share in causing the riots of 1875, or in causing the depressed condition of the peasantry. The Bombay Government shewed that before 1875 they had, in consequence of the great fall of prices, made considerable reductions in the land revenue demand recently imposed on parts of the four districts where the riots occurred; and they had laid down restrictions on future increases of the land revenue assessment. The Bombay Government saw no sufficient reason for acting on the Commission's recommendation that large increases of the land revenue should be made leviable gradually, instead of being carried out *per saltum* in one year as at present. And they did not see their way either to the Government usefully taking the place of the village banker and lending money to the ryots, or to any arrangement for altering the land revenue year by year according to the variations of the season. The Bombay Government concluded their review of this part of the subject by stating that the state of the ryots of the Deccan was most unsatisfactory; that one-third of the ryots were hopelessly involved and were little better than serfs, practically at the mercy of the bankers; and that ruin, if not arrested, would soon overtake the great body of the ryots.

4. Under the third head, namely, the action of the civil law and of the civil courts, the Bombay Government grouped the difficulties of the ryot in three classes. Before a ryot was taken into court by his creditor he was at a disadvantage by reason of his poverty, his ignorance, his extravagance, the load of ancestral debt which weighed upon him, the usurious interest charged, and the fraud occasionally practised by the money-lender, and also by reason of the shortness of the term of limitation which entailed the frequent renewal of bonds at usurious interest. When a ryot was taken into court by his creditor, he was at a disadvantage by reason of fraud practised by court subordinates in collusion with the creditor, whereby a summons was often returned as served when the ryot knew nothing whatever about the suit or summons; by reason of the *ex parte* decrees which followed upon such fraudulent returns to summonses; by reason of the distance of the courts, the long duration of contested suits, and the inability of the Judge to help the ryot to put his case properly;

and by reason of the high cost of litigation. After a decree has been passed against a ryot he is under great difficulties, because he is liable to be imprisoned for debt; because his property of *all* kinds was (but is not now under the new Code of Civil Procedure) liable to forced sale; because his ancestral lands are liable to a forced sale conducted under circumstances which (until the new Procedure Code was passed) were generally very disadvantageous to the ryot. For the purpose of relieving the ryot from some of these difficulties the Governor in Council, proceeding on the recommendations contained in the report or Minutes of the Commission, proposed—

(a) that all bonds between ryots and money-lenders should be executed by notaries public;

(b) that the ryot should be entitled to receive from his banker a yearly statement of his account;

(c) that receipts for a ryot's payments should always be entered on the bonds;

(d) that ryots should have pass-books, wherein their dealings with their bankers should be entered;

(e) that the period of limitation for money bonds should be altered from three to twelve years;

(f) that civil Judges should go more frequently on circuit;

(g) that the number of Judges should be increased;

(h) that the High Court should instruct the subordinate courts to act up to the law which binds Judges to weigh equitably the incidents to a disputed contract before it decrees full performance;

(i) that the High Court should take steps to keep the miscellaneous costs of litigation as low as possible;

(j) that Government should be enabled to advance money to insolvent ryots whose holdings were put up to auction by the civil courts, and should gradually recover the money through an agency for the management of such holdings.

The Governor in Council felt unable to support the recommendations of the Commission to the effect that—

(k) imprisonment for debt should be abolished;

(l) sales of land in execution of money decrees should be abolished.

5. With this letter from the Bombay Government was forwarded a Minute by the Honourable Mr. Rogers, a Member of that Government, who advocated the abolition of imprisonment for debt, on the ground that the power to apply for execution against the person is seldom used by creditors, save as a means of extorting fresh and more usurious bonds from creditors.

6. Owing to the famine and other causes the recommendations made by the Commission and by the Local Government were not

formally dealt with by the Government of India during the year 1877; but in the Code of Civil Procedure passed early in that year, before the receipt of your letter of the 6th April, but after the report of the Commission had reached the Government of India, certain provisions were introduced the effect of which was to afford greater protection to the ryot as regards the sale of his land under decrees of court.

7. His Excellency Sir Richard Temple having in the meantime succeeded to the office of Governor, the Bombay Government took up the question again in their letter of 19th January 1878, No. 308. In this letter the Bombay Government stated that although the evils on which the Commission had reported were less actively felt, still there was every reason to apprehend that they would sooner or later break out again. The Governor in Council admitted that the new Code of Civil Procedure (Act X. of 1877) had improved the condition of the ryot; for his necessaries were now protected from sale; his lands, instead of being subjected to forced sale might be placed under the management of revenue officers for the mutual advantage of his creditor and himself; he might protect himself from arrest by showing himself to be insolvent; aad if his total debts did not exceed Rs. 200, he might, after his insolvency had been proved, be absolved by the court from all further liability. Nevertheless the Bombay Government held that some of the roots of the mischief on which the Commission had reported remained untouched. The Governor in Council proposed early legislation on five separate matters, and forwarded a draft Bill to provide—

(1) that in money suits against ryots the court should be compelled to go behind the bond, into the facts and incidents of the transactions which led up to the bond;

(2) that in suits against ryots compound interest should not be decreed by the courts, and that simple interest in excess of the principal of a debt should not be allowed;

(3) that a ryot should not be bound to pay more than the principal of, and certain limited interest on, ancestral debts;

(4) that a ryot should be entitled at any time to claim the benefit of the insolvency law, without waiting (as the present law compels him to do) until he is arrested in execution of a decree; and

(5) that a ryot's lands should not be sold in execution of a money decree unless they have been specifically pledged to the decree-holder by a registered bond.

8. The Bombay Government subsequently, in their letter of the 4th of the following month, adverting to the possibility that the Local Government might not be legally competent to legislate on such a matter, recommended that the necessary legislation should take place in the Council of the Governor General.

9. The representations of the Bombay Government, of which the above is a summary, as well as the report of the Commission, received the most careful consideration from the Governor General in Council, and on the 1st July 1878 the Government of India, in a letter from the Department of Revenue, Agriculture and Commerce No. 404, stated the conclusions at which they have arrived. Fully recognizing the great importance of the matter, and accepting the view taken by the Government of Bombay that a special remedy should be provided for the evils now weighing upon the ryots of the five districts embraced in the report of the Commission, the Government of India reviewed the five recommendations submitted by the Government of Bombay. Taking these recommendations in the order given above, the Government of India pointed out that Bombay Regulation V. of 1827, as well as decisions of the High Courts of Calcutta and Bombay, certainly authorise, if they do not absolutely require, the courts to demand satisfactory proof that the consideration set out in a bond has really been received by the defendants. And the Governor General in Council doubted the expediency of further legislation in that direction. In regard to the award of usurious interest, it was observed that the old Hindu law called *Dámdupat* still obtains in the Deccan, and that under its provisions the creditor cannot, among Hindus, recover as interest a sum more than equal to the principal of a debt; but that, if the existing law on the subject was insufficient, the Bombay Legislature were competent to deal with the matter. In regard to the third point, attention was invited to Act VII. of 1866 of the Bombay Council, whereby the liability of a Hindu for his ancestor's debts is restricted. At the same time it was said that if the provisions of that law did not give sufficient protection to ryots, the local Council would be competent to amend their own law on the matter. On the other points, namely, (4) a provision, empowering a ryot to claim the benefit of the insolvent court, and (5) a provision, exempting a ryot's land from sale save under a registered bond pledging the land in security for the debt, and requiring all bonds relating to land to be registered, a Bill was prepared for submission to the Governor General's Council, and a draft of that Bill was forwarded to the Bombay Government for their opinion.

10. The Government of Bombay in their letter of the 5th September 1878, No. 4579, accepted, subject to certain suggested modifications, the Bill which the Government of India proposed to introduce into the Council of the Governor General in regard to points (4) and (5) described above. The Government of Bombay considered that the existing law and rulings of the High Court did not in practice suffice to protect the ryot from usurious compound interest, or from being unduly saddled with ancestral debts, and they remarked that the law, as it now exists on this point, applies only to particular classes of the community. His Excellency in Council expressed his readiness at once to act on the suggestion of the Government of India that a Bill to amend the law on the subject of points (2) and (3) above-mentioned should be laid before the local Legislature.

11. The Bombay Government again urged strongly that fresh legislation was needed to *require*, not merely to *enable*, the courts to go behind the bonds on which bankers sue ryots. They stated that at present it was not the practice of the civil courts of Bombay to require satisfactory proof that the consideration named in a bond had been actually received. They represented that any legislation in behalf of the Deccan ryots which did not fulfil this requirement would be a half measure, and must, therefore, be unsatisfactory. Further, the Local Government advised that the proposed legislation should provide for the establishment of local notaries public, as suggested by the Commission; and requested that power might be taken for extending the special legislation to other parts of the Bombay Presidency outside the four districts to which the enquiries of the Commission were mainly directed.

12. The Government of India, in replying to the foregoing representation in their letter of the 27th November 1878, adhered to the view that it was not expedient to legislate on point (1), in order to enable, or to require, courts to go behind the bond. The Governor General in Council held that the existing law enabled courts to do this, whenever the defendant contested the *bonâ fides* of a bond, and could support his objection. Any further legislation in that direction would practically be transferring to the plaintiff in suits for money due on a bond the burden of proof, which according to the Evidence Act lies upon the defendant. The Government of India were not prepared to assent to special legislation for the purpose of shifting the normal incidence of proof as between the indebted agriculturist of the Deccan and those to whom his debts are due. The proposal to extend the insolvency clause of the Bill beyond Rs. 200 in the case of ancestral debts seemed to the Government of India unnecessary. As the Indian Registration Act provided sufficiently for the registration of deeds to which agriculturists were parties, and as the number of registration offices could be increased at the discretion of the Local Government, it was deemed undesirable to create a second system of registration offices, under notaries public, side by side with the registration offices under Act III. of 1877.

13. Shortly after this letter was sent to the Government of Bombay the Government of India received a telegram from the Secretary of State desiring that the Bills referred to should not be proceeded with pending the receipt of a despatch from Her Majesty's Government. With that despatch, which bears date the 26th December last, the Government of India have been furnished with a copy of the despatch bearing the same date, No. 4, addressed to the Government of Bombay, in which the subject is fully reviewed, and the conclusions are stated, at which the Secretary of State has arrived as to the objects that should be aimed at in the proposed legislation. It should be noted here that when this despatch was written the Secretary of State was not in possession of the letters addressed by the Government of India to the Government of Bombay under date the 1st July and the 27th November 1878. In regard to the procedure which is to be adopted, the Secretary of State

has decided that the evils which it is sought to remedy, so far as they may be capable of being eradicated by legislation, should not be dealt with piecemeal, but should be provided for in a single comprehensive enactment. It follows, therefore, that the whole of the legislation must be comprised in one Bill to be passed in the Council of the Governor General. One of the conclusions which Lord Cranbrook draws from the report of the Commission is that—

> "some of the great causes which lie at the bottom of the poverty of the "Deccan are wholly beyond the reach of the legislator, and are inherent "in the national character and in the customs which have prevailed for "countless generations".

The grounds of this conclusion are stated in the following paragraphs:

"(9.) The Deccan ryots, like the general mass of the cultivating classes in other parts of India, are entirely without capital, and are driven on the first bad harvest into the hands of the money-lender, not only for the means to till their fields, but for food to keep themselves and their cattle alive till the crops of the next season are matured. This fact has created the system of borrowing at high interest which prevails so largely amongst the agricultural population, and has made the existence of a money-lender in a Hindu village as essential as that of a ploughman.

"(10.) The normal condition of a Hindu cultivator is much aggravated by local circumstances in parts of the Deccan. The soil is sterile, the climate is precarious, a good crop being in some parts obtained only once in three years, the fall of rain is scanty, the peasantry, though a sturdy and ordinarily a law-abiding people, are described as 'utterly uneducated, and with a narrow range of intelligence'. It is obvious that the causes mentioned in this and the preceding paragraph are not to be easily modified by any legislative Act.

"(11.) The districts in which the riots took place came into British possession in 1819, and at that period and for 20 years afterwards divers causes, such as the ravages of Holkar's Army and the dreadful famine which followed his campaign—a famine which was repeated two or three times during the first 20 years of the century—the subsequent heavy fall of prices, and the consequently oppressive weight of the old Mahratta rate of assessment which was at first continued by the Government of the day, all these had produced an amount of poverty and ruin which the settlement officer writing in 1838 found it impossible to describe.

"(12.) The Government of that day, however, made strenuous efforts to better this state of things. They reduced the assessment from an average rate of 13½ annas to 7 annas; they gave the cultivators for the first time fixity of tenure; and they abolished extra cesses.

"(13.) A Resolution of the Government of Bombay, dated 30th August 1875, describes the satisfactory results of this new settlement of the land: 'In 1838 more than 50 per cent. of arable land was waste; in 1871 only one per cent. Population increased, during the term of the settlement, 39½ per cent.; agricultural cattle 19 per cent.; ploughs 22½ per cent.; carts 270 per cent.; and wells 40 per cent. Government land was unsaleable in 1838; during the last five years of the settlement examination of the registration records showed that it fetched from 10 to 52 times its assessment. Thirty years ago there were no made roads, and communication was costly and difficult; the taluka is now traversed by the railway and by several excellent roads, and the increase in the number of carts indicates the extent to which the people avail themselves of the new facilities of communication with markets.'

"(14.) Satisfactory as this picture of progress is (and similar ones may be produced from all parts of India), there is undeniable evidence in the report before me that the very improvements introduced under our rule, such as fixity of tenure and lowering of the assessments, have been the principal causes of the great destitution which the Commissioners found to exist.

"(15.) The saleable value of the land greatly increased the credit of the ryot, and encouraged beyond measure the national habit of borrowing, which I have before observed on. High prices led to extended cultivation, to more expensive modes of living, to larger outlay on the great stimulant to Hindu expenditure—marriage ceremonies. Recourse to the money-lender became then more frequent than before, and the class of money-lenders competing for custom increased in most undue proportions. The first fall in prices, and the first bad harvests, both of which had occurred in these districts, found the cultivators as poor as ever, but encumbered with an additional mass of debt. Still no one would advocate, as an amendment of the law, that we should abolish fixity of tenure, or increase the assessment of the land.

"(16.) Up to this point, then, I can see no opening on which the legislator can enter with effect. In all civilized societies there is a vast amount of suffering and destitution, very

> lamentable to contemplate, but which it is wholly out of the power of the State by any direct action to eradicate. All that Government can do is to take care that its own institutions shall not aggravate the misery which so often follows the spontaneous action of the population."

The Secretary of State then proceeds to state his opinion as to the nature of the remedies that should be applied. His conclusion is that these remedies mainly consist in the adoption of measures for mitigating the harshness with which the courts of justice and the law operate on the debtors who form the great bulk of the population. He remarks that the Civil Judges are so few, and their courts are so distant from the homes of the ryots, that they are incapable of administering justice between debtor and creditor. And while reluctant to suggest, especially at the present time, any increase of the cost of administration, he deems it imperative that these defects should be remedied, either by a re-distribution or by an increase of expenditure. He remarks that the status of the agricultural population of India is much akin to that of France, and he suggests that it might be possible to establish in the rural districts of India, and of the Deccan especially, tribunals similar to those of the *juge de paix* in France and in Switzerland. In each of the rural *departments* of France there is a *juge de paix* on a salary of £72 a year and upwards, with an average jurisdiction over 80 square miles and of 13,300 souls. His decision is final up to limit variously stated at £2 and £4 sterling. In all cases, which are not urgent or do not involve questions of mercantile law, he is bound to confront the parties together, and to attempt to secure an amicable settlement between them, before he brings the case on his file for formal trial. Lord Cranbrook suggests that "the existence of courts with summary jurisdiction and without appeal up to a limited amount, and possibly with the exclusion of professional pleaders placed within reach of the suitor's home, would tend to remove many of the evils which have been brought to notice". He admits that the circumstances of Indian society require that only a very limited summary jurisdicition should be given to Subordinate Judges, more especially in the exercise of discretion as to the enforcement of the terms of written contracts. But he suggests that "summary jurisdiction without appeal might experimentally be conferred on all Civil Judges in the Deccan with great benefit", and he adds that "the limit to be fixed would of course vary with the rank of the Judge". His decision is that a comprehensive Bill for relieving the Deccan agriculturists should be framed as soon as possible, on the principles set forth in the despatch, and also on those which Lord Salisbury had previously sanctioned.

14. The Governor General in Council has very carefully considered the observations and instructions contained in the Secretary of State's despatch. The suggestion that the number of courts of justice in the interior should be increased, and that all Judges should be invested with a final jurisdiction in petty cases, points to a very considerable change in the procedure of our civil courts. The propriety of limiting the right of appeal in petty civil cases has been discussed in India for many years

past. At present the decisions of Courts of Small Causes are practically final up to a limit of Rs. 500, in what are known as cases of the Small Cause Court type. In Madras the decision of a village headman is final in suits for personal property up to Rs. 10, and if the parties consent he can determine similar suits up to Rs. 100 in value, with or without the assistance of a panchayet (local jury). The regulations under which these village courts exist set out that powers were given to village courts, among other reasons, in order "to diminish the expense of litigation in petty suits, and to promote the speedy adjustment of such suits without subjecting people to the inconvenience attending a long absence from their homes". The returns of 1877 show 44,163 suits decided by village headmen out of a total of 196,343 suits decided by all courts in the Presidency. The District Munsifs in the Madras Presidency are invested under a local Act (No. IV. of 1863) with a final jurisdiction "in suits of a nature cognizable by a Court of Small Causes when the debt, damage or demand does not exceed in amount or value the sum of fifty Rupees". It has been on occasions held by authorities conversant with Indian life that the people greatly value the privilege of appeal. Very recently in Bengal, when a scheme for improving the courts in the interior of the country was, after long discussion, submitted to the home authorities, it was decided that final appellate jurisdiction could be only given to benches of two Judges (one European and one Native) up to a limit of Rs. 200 in value. And it was held that the majority of suitors would not be satisfied with any final appellate jurisdiction short of the High Court in suits of higher value, until the new appellate benches to be established in the interior gained for themselves the confidence of the people.

15. It is desirable that these facts and these considerations should be kept in view in framing a scheme for remodelling the system of judicature in the districts to which the correspondence reviewed in this letter has reference; but the Governor General in Council readily admits that the circumstances which have occurred are such as to justify the experimental legislation which has been sketched out in the despatch of the Secretary of State. It will be for the Government of Bombay to consider how far it will be expedient to give jurisdiction in petty suits to the headmen of villages, to what extent and at what cost to the Provincial revenues the existing judicatories require to be increased, and how far a summary jurisdiction, not open to appeal, should be conferred on each grade of judicatory. The Bill will deal not only with the civil courts but with the other points for which it was intended to provide in the Bill which the Honourable Mr. Cockerell obtained leave to introduce into the Council of the Governor General in June last, and in the Bill which was to have been passed in the Council of the Governor of Bombay under the authority conveyed in the letters from the Department of Revenue, Agriculture and Commerce of the 1st July and 26th November 1878. In order that no avoidable delay may occur in carrying out this measure, the Governor General in Council has resolved to entrust the

duty of preparing the draft of a Bill for the purpose of giving effect to it, to the Honourable T. C. Hope, C. S. I., who will be instructed to perform this duty in communication with the Government of Bombay and with the Home, Revenue, and Legislative Departments of the Government of India. Each Department will be instructed promptly to furnish Mr. Hope with all papers he may require, and with such assistance as may be necessary for preparing a Bill for submission to the Council of the Governor General for making Laws and Regulations. Mr. Hope will visit Bombay to consult with His Excellency the Governor in Council on the details of the Bill, as soon as he is prepared to do so.

16. There is one point, however, which, although it may possibly not involve legislation, appears to the Governor General in Council to demand further consideration from the Bombay Government, viz., the possibility of adapting the assessment of the land revenue to the variations in the season. This question is discussed in paragraph 10 of the Bombay Government letter of the 6th April 1877. The Governor General in Council fully agrees in the view that, in ordinary cases and where the land revenue is moderate, it would not be good, either for the ryots or for the public treasury, that the land revenue demand should fluctuate. But the system, which is best for districts enjoying an ordinarily regular rainfall, may not be the best for the arid tract of the Central Deccan, where (it is said that) a good rainfall comes only once in three years. In view of the very great fall of prices, and the vicissitudes of season in the Deccan during the last few years, it would be desirable that the present Government of Bombay should consider whether the recent (1873-75) revisions of the revenue have given sufficient relief from an assessment, which was based, in part, on an unduly high estimate of the normal value of field produce in the Deccan. And further, the Governor General in Council would wish the Government of Bombay to consider whether in these four districts, or in parts of them, it would not be wise to have a varying scale of revenue demand to be applied in unfavourable seasons, whereby the normal assessment might be reduced by a certain percentage over an entire district, or division of a district, in the event of a failure of rain or other cause of serious damage to the crops.

Nos. 6—265 to 274, dated Fort William, the 6th March 1879.

From—C. BERNARD, Esq., C. S. I., Offg. Secretary to the Government of India, Home Department.

To—Local Governments and Administrations.

Despatches from the Secretary of State Nos. 4 and 63 of the 26th December 1878. Letter to the Government of Bombay No 222, dated the 26th February 1879.

I AM directed to forward copy of the papers marginally noted, concerning the measures which are to be taken for the relief of ryots in parts of the Deccan, and to request that the Governor General in Council may be informed whether

consider that it would be expedient in
to invest the courts of various grades with a

summary jurisdiction; and when they possess such a jurisdiction, whether it should be extended; and if so, within what limits and subject to what restrictions as to the subject-matter of the suits.

2. The subject is one on which it would be desirable to obtain the opinions, not only of some of the ablest European judicial and revenue officers, but of intelligent Natives, official and non-official.

3. The Governor General in Council would also wish to be informed whether

there are any districts, or parts of districts, in

in which the plan of an assessment of the land revenue varying with the season to which reference is made in the 16th paragraph of my letter of the 26th ultimo, to the Government of Bombay, might be adopted with advantage.

P. S.—Copy of a suggestive article recently published in a vernacular newspaper of Northern India touching the further utilization of the panchayat system is appended for information.

THE REVIVAL OF VILLAGE PANCHAITS.

[Translation of an article from *Akhbar-i-Anjuman-i-Panjab* dated the 27th September 1878.]

SYED AHMED KHAN BAHADUR, C. S. I., Editor of the *Aligarh Institute Gazette*, has published a leader in his paper of the 7th September, page 290, refuting the arguments of a Native of Punjab for the revival of the village panchait. The Syed says that the panchait is an oppressive institution of the dark ages, quite unsuited to the present state of civilization, science and art. He is unquestionably an educated and enlightened gentleman, but his love of Western civilization has produced in him a strong dislike for everything Native, whether it be Native ideas, associations, arts or manufactures. He seems to forget that the very same Western enlightenment which has so much influenced him is advocating the revival of such useful institutions. As his eloquence has reached to the Legislative Council and secured for him a seat there, he has given his opinion beforehand, so that it might be taken as that of the educated Native community and have weight in the Council.

We beg to refer the Syed to Section 6 of the Act X. of Civil Procedure Code for 1877, Madras. The village panchaits and munsifs have been established all through the Madras Presidency agreeably to this Act. We beg to ask him whether they are doing real good to the country, whether they are composed of the enlightened Europeans, and whether Madras is a portion of India? When they are doing their work satisfactorily in the Madras Presidency, there seems to be no *primâ facie* reason why the institution should not succeed in other parts of the country. We don't think that the village munsifs and the members of panchaits in Madras are all well educated men and thoroughly acquainted with all the laws and regulations in force in the country, but it is not essential that they should have such an elaborate training.

They may be intelligent and clever men, and such can easily be found in every part of the country. Some simple rules and regulations can with ease be framed for their guidance. But the technicalities of the law are quite different things from justice. The panchait can very fairly decide the cases of its own village, as it fully knows the particulars. Syed Ahmed Khan remarks that although the law recognizes the decisions of panchaits as legal, the people hardly resort to them for the settlement of their disputes. The cause of this is that in the present times of freedom and liberty, when even children do not obey their parents, the village headmen have no authority and influence over the inhabitants of the village. On the contrary, they are themselves afraid of *badmashes.* They hear false evidences given in the courts, but cannot breathe a word. If their authority were restored, the *badmashes* would fear them, and the people would refer their disputes and private quarrels to them for decision. On account of their having no legal authority at present, they are not held in honour by the people.

Syed Ahmed Khan has served as Judge for a long time. We beg to ask him how many intricate cases he has referred to private panchaits and commissions every year for decision. If the working of the civil courts of a Presidency were well considered, more than one-fourth of all the cases decided might be referred to panchaits for final decision. One would have many occasions to admire the penetration of such panchaits in intricate cases. We ask Syed Ahmed Khan whether the following kinds of cases would not be better disposed of by a village panchait than by a court of justice—

(1.) In a village which is situated 25 miles from the nearest court of justice, A's cattle injure B's crops. Now B has to seize the cattle and take them to the nearest police station which is, say, ten miles distant from the village. He then goes to the court, which is 25 miles distant from his house, to sue for damages, pays the court fee and the expenses of the witnesses, and his work also suffers during his absence from house. In spite of all this trouble and expense he may not be able to produce sufficient evidence for the conviction of the accused, and therefore the accused may be acquitted by the court.

(2.) In the same village a quarrel takes place between A and B, and A slightly hurts B. B goes to the court, which is 25 miles from the village, and submits a plaint, charging A with causing simple hurt. Four or five witnesses, both for the prosecution and defence, are then summoned to the court. Their dispute is ultimately settled by private compromise. Thus they are unnecessarily put to a great deal of trouble and expense, which would be avoided if there were a legally constituted panchait in the village.

(3.) In the same village A borrows Rs. 2 from B, and afterwards does not repay the amount to the creditor. B applies to the court for the recovery of his money, and the debtor and the creditor are each put to an expense of Rs. 5 before the latter obtains a decree for the amount against the former.

(4.) In the same village A holds a decree for Rs. 2 against B, and applies to the court for the execution of the decree. But before the decree is executed and B's property attached, B pays the amount of the decree to A. A, the decree-holder, must then go to the court to certify to the fact of the payment. Suppose he is unable to walk 25 miles, he will have to hire a carriage. If there were a village panchait, he might certify the payment to it.

We do not mean that every caste such as barbers, potters, kahars, &c., should have their different panchaits. In every large village or town a panchait should be established, consisting of two, three, five or more respectable and influential persons of the village or town. When there are three or four small villages at a short distance from one another, a panchait should be established in one of those villages, and its jurisdiction should extend over all of them. A few simple and short rules should be prescribed for the guidance of such panchaits. They might be entrusted with powers to hear and decide the following kinds of cases:

(1) Suits for damages for injury done to crops, trees, &c., provided the damages do not exceed Rs. 20;

(2) Suits for the recovery of debts up to Rs. 20;

(3) Disputes connected with marriage or caste matters;

(4) Disputes arising from the closing of thoroughfares;

(5) Cases of causing slight hurt;

(6) Cases of abusive language; and

(7) Offences against sanitary rules.

In all cases the plaints submitted to the panchait might be on plain paper, and copies of judgments might also be granted by it on plain paper to the contending parties. If any party is dissatisfied with its decision, he might appeal to the regular court of justice within one month after the date of the judgment delivered by the panchait. Otherwise the decision of the panchait would be considered final and taken as that of a legally constituted court. In cases of marriage, relations and caste disputes the panchait would have simply to ascertain whether the party made outcaste is really guilty. If the wronged party has a valid claim for damages thus sustained, he might then be authorized to file his regular suit in the civil court, if it be beyond the panchait's power to decide. The panchait might also be entrusted with the duties of village marriage registrar. In every civil suit in which the value of the claim is above one rupee, the panchait should levy a fee of eight annas from the party who loses the case. When a court executes a

decree for money against the judgment-debtor and the judgment-debtor pays the amount of decree to the decree-holder, the decree-holder should certify the payment to the village panchait. In criminal cases the panchait might fine up to rupees five. It might be also entrusted with the duty of exercising a check over the village *badmashes.*

If such village panchaits be established all over the country by the Government, the people will be spared a great deal of inconvenience and expense, and the courts will be greatly relieved from much miscellaneous work and from the trouble of deciding numerous petty cases.

The Local Government might be authorized to increase the power of such panchaits whose working is found quite satisfactory, and to decrease the powers of others where the working proves irregular and unsatisfactory in any way.

By the constitution of such panchaits the influence of the village headmen will be legally established, the *badmashes* will be kept from mischief, petty disputes and quarrels will be amicably and fairly settled, and courts will not be overworked with petty cases as is the case at present.

(True Translation.)

KASHI NATH,

Officiating Government Reporter.

The 2nd November 1878.